

ADDENDUM 1

Volume 10

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1 IN THE CIRCUIT COURT OF
2 MADISON COUNTY, TENNESSEE
3 AT JACKSON, DIVISION I
4 _____

5 JON HALL,

6 Petitioner,

7 vs.

No. C00-422

8 STATE OF TENNESSEE,

9 Defendant.
10 _____

11 HEARING ON POST-CONVICTION

12 RELIEF PETITION

13 MAY 15, 2002

14 VOLUME II OF IV
15 _____

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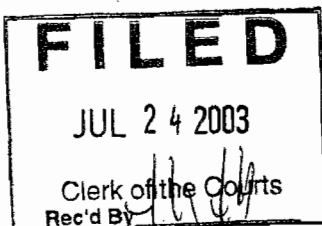
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21 OFFICIAL COURT REPORTER

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23 JACKSON, TENNESSEE 38301

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TABLE OF CONTENTSVOLUME II

SHERYL ARBOGAST

Direct Examination Page 133

Cross-Examination Page 197

Redirect Examination Page 208

PAMELA FOREMAN

Direct Examination Page 212

JACKIE BRITTAIN

Direct Examination Page 217

Cross-Examination Page 239

Redirect Examination Page 242

PAMELA BRITTAIN

Direct Examination Page 245

Cross-Examination Page 256

Redirect Examination Page 258

SHERYL ARBOGAST (recalled)

Direct Examination Page 265

KATHY HUGO

Direct Examination Page 271

Cross-Examination Page 287

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1

EXHIBIT INDEX

2 EXHIBIT 5

Page 145

3

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4

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1 SHERYL ARBOGAST was called and
2 being first duly sworn, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BUCHANAN:

6 Q Would you state your name for
7 the record, please?

8 A Sheryl Arbogast.

9 Q And would you spell your last
10 name, please?

11 A A-r-b-o-g-a-s-t.

12 Q And why don't you spell your
13 first name, if you don't mind.

14 A It's with an "S", S-h-e-r-y-l.

15 Q All right. Ms. Arbogast, where
16 do you live?

17 A Cincinnati, Ohio.

18 Q And what is your relationship to
19 Jon Hall?

20 A I'm his older sister. I am the
21 fifth of seventh children. He's the
22 seventh child.

23 MR. BUCHANAN: Judge, in
24 connection with this testimony, I want

1 to direct the Court's attention to her
2 testimony at the trial in Volume IV,
3 Page 430 and 431, taking up some 20 plus
4 lines total in the punishment phase.

5 Q Now, Ms. Arbogast, you have been
6 Jon's sister working on this case almost
7 from the beginning; have you not?

8 A Done a lot of bookkeeping, yes,
9 sir.

10 Q And would you tell the Court
11 what you've done in terms of
12 bookkeeping?

13 A When I received phone calls from
14 Jon, I would take notes and try to help
15 him find out information about his case
16 because he was not being informed of
17 hearing dates or wasn't certain of who
18 was assigned to represent him. There
19 were calls that I placed to his
20 attorneys trying to find out that
21 information, and I took notes from those
22 calls, too.

23 Q All right. Did anyone ever come
24 see you in person or interview you in

1 person before the trial itself?

2 A No, sir.

3 Q Did you make attempts to talk to
4 the attorneys that were involved in the
5 case?

6 A Repeatedly.

7 Q How successful were you?

8 A Not at all really. I was given
9 a couple of dates on a few occasions. I
10 know in one instance I was told that
11 they weren't allowed to give out any
12 information to me without Jon's
13 permission, and I said, "But Jon has
14 called me to ask you this, and he has
15 called your office, but you won't accept
16 his calls, so he's not able to notify
17 you to speak with me, and so that's the
18 purpose of my calling you now," and they
19 just wouldn't give me any information.

20 Q Prior to the time that you
21 testified, if you had been asked, -- Did
22 you know Jon and Billie?

23 A Yes.

24 Q Did you know somewhat the

1 history of their relationship and how
2 they inter-reacted with each other?

3 A Yes, I had spent the night at
4 their home.

5 Q If you had been asked the
6 question at guilt or innocence, "Do you
7 know of any reason in the world why Jon
8 would have premeditatedly thought to
9 kill Billie," what would have been your
10 answer?

11 A Can you ask the question again?

12 Q If you were asked, "Do you know
13 of any reason why Jon would
14 premeditatedly kill Billie," what would
15 have been your answer?

16 A If I had been asked at that
17 time?

18 Q Uh-huh.

19 A I'm still not sure if I
20 understand what you're asking me.

21 Q Do you have any personal
22 knowledge that would lead you to think
23 that Jon would, in a premeditated
24 manner, ever have killed Billie?

1 A Oh, no.

2 Q Would that testimony have been
3 available for you to testify to in 1997?

4 A Yes, I suppose so.

5 Q Have you ever felt that there's
6 anything, either before then or even up
7 to today, that would lead you to believe
8 that Jon would, in a premeditated
9 manner, have killed Billie?

10 A No.

11 Q Did you know something about --
12 Can you tell the Judge a little bit
13 about the -- Now, when you testified at
14 the punishment phase, your testimony
15 took up about 20 to 25 lines; did it
16 not?

17 A Yes, I believe that's correct,
18 on the transcript.

19 Q Did you grow up with Jon?

20 A Until I went to college I did.
21 Until I was 18 I was in the home with
22 Jon.

23 Q And that was at a home where?

24 A In Ligonier, Pennsylvania.

1 Q Ligonier, Pennsylvania, and it's
2 close to what big city?

3 A Close to Pittsburgh.

4 Q In what years was it that you
5 lived with Jon there in the home?

6 A From the time I was eight years
7 old, I came back home to live from my
8 grandparents, and I stayed there until I
9 went to college, and Jon was living
10 there that entire time.

11 Q Did you have occasion to see the
12 inter-reaction of Jon's father and your
13 mother during that time?

14 A Yes.

15 Q Would you tell the Judge how
16 they inter-reacted with each other?
17 Especially regarding conflict
18 resolution, in other words, when they
19 would get into arguments.

20 A It was a very difficult
21 environment growing up because they did
22 fight all the time. They argued
23 incessantly. It occurred every night.
24 It frequently led to pushing and

1 shoving, and on a number of occasions
2 there were just horrible knock-down
3 drag-out fights where bones would be
4 broken and blood would be flying and
5 hair was being ripped out by the roots,
6 and we would be scrambling to try and
7 find someone to break up the fight for
8 fear that one of them would be killed,
9 generally for fear of my mother's life
10 because my father was so violent. He
11 was a heavy drinker, and it was just
12 constant conflict and angst for all of
13 us to have to live through that.

14 Q Did you want to get with the
15 attorneys and tell them about this?

16 A Oh, I remember as a child
17 begging them to please separate, and my
18 mom always would say, "If it weren't for
19 you kids, I would never stay with him,"
20 and I was like, "But I don't want you to
21 stay with him for my sake. I don't want
22 this guilt. I want you to be free of
23 him and not to be beaten all the time,
24 and I would be happy to testify in court

1 if you would divorce him so that you can
2 leave. Even if we have to stay with
3 relatives, I'd rather have the family
4 broken up than to live like this," and I
5 said that as a child, and I was made fun
6 of, and I remember it because I was so
7 little and saying that, and I still
8 believe it today.

9 Q Would Jon witness these fights
10 that your parents would have?

11 A Uh-huh, sure.

12 Q Did your parents -- did they
13 resolve conflict ever in a peaceful
14 manner, or sit down and talk it out,
15 anything like that?

16 A No. Usually if there wasn't a
17 physical fight that ended the arguments,
18 my father would simply shut down and not
19 speak. He would turn his back on her.
20 He would put a pillow over his head on
21 the couch, and he would just stop
22 listening to her and stop interacting
23 with her, and that would end it, but it
24 was never something that we observed

1 them to sit and hold hands and make up
2 or to come to any sort of a compromise
3 on anything.

4 Q Now you didn't actually see Jon
5 and Billie inter-react very much, did
6 you?

7 A No, because I was gone at
8 college, and then I got married, and he
9 met her and married her. I didn't go to
10 the wedding, so I didn't know them at
11 that point. I did stay at his home on a
12 couple of occasions, and he came to my
13 home.

14 Q Well I want to direct your
15 attention to, say, August of 1994. Tell
16 the Court -- First tell the Court, how
17 many brothers and sisters are there?

18 A There are seven total children.
19 There are three girls and four boys, and
20 the order of birth is two girls, two
21 boys, myself, a brother, and then Jon is
22 the last in the lineup.

23 Q Jon is the baby.

24 A Right.

1 Q Jeff is -- Are all of them alive
2 now except Jeff?

3 A Yes. Jeff is the only one who
4 is deceased. He's the one next older
5 than me in the birth order.

6 Q In the period from May until
7 July of 1994, of the siblings, who was
8 probably the closest to Jon?

9 A Jeff.

10 Q And this is the brother that had
11 AIDS?

12 A Right.

13 Q Did you ever make any attempt to
14 tell his attorneys that he had at the
15 time between 1994 and '95 that you had
16 Jeff down there and he had AIDS and we
17 needed to get something done about it?

18 A I did, yes. I went to great
19 lengths to do that.

20 Q Would you tell the Court what
21 you did?

22 A I flew to Texas, and even though
23 he was quite ill, I went together with
24 him to have a legal document notarized

1 properly so that it could be preserved,
2 that no one ever contacted him for any
3 information on Jon's behalf.

4 Q And when did you do that?

5 A It was within three months of
6 his death.

7 Q Did you do that under the
8 direction of an attorney?

9 A I believe there was somebody in
10 the prison that Jon knew who was
11 advising him that that testimony was
12 critical and we needed to preserve it
13 any way we could, and I believe that's
14 how the idea came about. But before
15 that ever happened, I had made repeated
16 phone calls and tried to speak with the
17 attorneys in person, or on the
18 telephone, to make them understand that
19 it was critical that they interview
20 Jeff.

21 Q And were you ever successful in
22 getting anybody to do anything about it?

23 A Nobody ever did contact him, no.

24 MR. BUCHANAN: Your Honor, I'd

1 like to have this marked, please.

2 MR. EARLS: I haven't seen that,
3 Your Honor.

4 Well, Your Honor, I object to
5 the hearsay. This is the first time
6 I've seen the document, Your Honor.

7 MR. BUCHANAN: Your Honor, I'm
8 not offering it at this point for the
9 truth of the matter asserted. I'm
10 offering it to show what was available
11 had somebody gone and tried to do
12 something and get this testimony
13 memorialized.

14 THE COURT: I'm going to let the
15 affidavit at this point be marked
16 Exhibit 5 and let you proceed on
17 questioning this witness and give it
18 what consideration I feel would be
19 appropriate.

20 MR. ELLIS: Your Honor, could I
21 briefly address the Court? Your Honor,
22 in post-conviction hearings, as you well
23 know, if -- any time a witness is
24 unavailable to be called and counsel

1 makes that argument in front of the
2 trial court and doesn't present any type
3 of proof to preserve what would have
4 been said or what that person could have
5 testified to, then basically the appeals
6 court overlooks it. So I want to stress
7 that there should be due weight given in
8 the fact that these attorneys had an
9 opportunity to call him and they missed
10 that opportunity. He is now deceased.
11 He made this affidavit actually I
12 believe in contemplation of death, which
13 would satisfy Rule of Evidence
14 804(b)(2), and, therefore, would be
15 allowed to be under -- be admitted into
16 the rules of evidence without any
17 prejudice against him.

18 THE COURT: Again, I've ruled it
19 can come in and be marked at this time
20 as Exhibit 5.

21 (Exhibit 5 was marked
22 and entered.)

23 MR. BUCHANAN: Your Honor, may I
24 approach?

1 THE COURT: Certainly.

2 Q I want to show you what's been
3 marked Exhibit Number 5 and ask you if
4 you can identify that document.

5 A Yes. I was with him when he
6 signed that.

7 Q All right, that's my next
8 question. Is that his signature?

9 A Yes.

10 Q And you were there when he
11 actually signed it and swore to it in
12 front of a notary public in Texas?

13 A Right. I drove him.

14 Q All right, thank you.

15 MR. BUCHANAN: Your Honor, I
16 would tender Exhibit Number 5, if I
17 might address the Court from the podium.
18 Following up somewhat on Mr. Ellis'
19 eloquent argument, that is -- there are
20 several reasons why I'm tendering it to
21 the Court, and the Court may want to
22 withhold judgment at this point or not,
23 but the purpose of tendering it is this:
24 Number 1, to show that this, as

1 best we can tell, is what testimony
2 would have been produced had it been
3 able to been memorialized. Number 2,
4 that, in fact, this record will show
5 that they never attempted to introduce
6 that at the trial under 804, I believe
7 it is, 804 (b)(2), which we, of course,
8 will be arguing that that is something
9 that should have been done.

10 THE COURT: All right. It has
11 been marked Exhibit 5, and you can
12 proceed in questioning the witness.

13 Q All right. Why did you do this
14 instead of the attorneys? Do you know?

15 A Why did I do this what?

16 Q Why did you do this instead of
17 the attorneys?

18 MR. EARLS: Your Honor, I object
19 to the form of the question. She can't
20 speculate.

21 THE COURT: Objection sustained.

22 Q Why did you feel you had to go
23 do this on your own?

24 A I believed that Jon didn't have

1 any witnesses that could give the other
2 side of the story. I felt like in the
3 trial that only one side was presented,
4 and what I came to be aware of through
5 Jeff was critical to his defense, and it
6 hadn't been presented, and I felt like I
7 needed to do something to try and help
8 Jon should he ever get an appeal where
9 it could be heard.

10 Q Well I'm not sure you understand
11 my question. I'll try to state it a
12 little better. What's the date on the
13 affidavit?

14 A I don't know.

15 Q Well about how long was it
16 before he died?

17 A It was within three months, I
18 believe, of his dying that I had this
19 done.

20 Q What kind of shape was he in?

21 A He was emaciated and was hardly
22 able to eat anything. He was exhausted,
23 tired. He was not able to walk a very
24 long distance. He had a handicap thing

1 for his vehicle. He was disabled,
2 unable to work.

3 Q What did you personally feel
4 like his days were left? Did you feel
5 like he was close to death?

6 A Yes, I did. I absolutely did.
7 He was about 113 pounds when he died, I
8 believe. He was wasting away from AIDS.

9 Q And you had tried to get the
10 attorneys to do this. They hadn't done
11 anything, so you took it upon yourself
12 to do it.

13 A Yes, sir.

14 Q And you did that because you
15 were afraid he was fixing to die.

16 A Yes, and as a nurse, I honestly
17 knew with some certainty that his time
18 was extremely limited. I knew what his
19 blood counts were, his T-cell counts,
20 and I can tell you that if somebody is
21 -- you know, their ribs are sticking out
22 and they're not eating anything -- I
23 mean, he was like dying of starvation,
24 if you will. That's what he looked

1 like.

2 Q And do you know, did any
3 attorney ever tell you why or give you a
4 reason why they would not petition the
5 Court to do a deposition to preserve his
6 testimony?

7 A I had been told on a couple of
8 occasions that they intended to talk to
9 him, but they never did.

10 Q How many times would you call --
11 Just say in a month's period, say a
12 typical three-month period, how many
13 times would you call whoever his
14 attorney was trying to get in touch with
15 them?

16 A For a while there I was trying
17 to call every week or every two weeks to
18 try and reiterate that this needed to be
19 done and to see how far they had
20 progressed with it before a hearing
21 date, for example.

22 Q To your knowledge, as of the
23 date of his death, had anybody,
24 investigator, attorney, anybody,

1 contacted Jeff?

2 A No, I'm sure they didn't.

3 Q Now, when were you talked to by
4 an attorney for the first time? Do you
5 remember?

6 A I made telephone calls to their
7 offices. And you mean with regard to
8 Jon's actual trial?

9 Q Yes.

10 A The instructions and prepping of
11 witnesses, if that's what you're
12 inferring or asking me about, it took
13 place the night before by telephone, and
14 the actual face-to-face took place 15
15 minutes prior to testifying.

16 Q So no attorney sat down and got
17 a long history from you or anything of
18 that nature?

19 A No.

20 Q And you are a sister of Jon.

21 A Yes.

22 Q And what are the names of --
23 We've already heard from Debbie Davis,
24 and you're Sheryl Arbogast. Would you

1 tell the Court the names of the other
2 brothers and sisters?

3 A Kathy Hugo and -- She's the
4 oldest girl; Jay Hall is the oldest boy;
5 Jeff Hall who died; I have a younger
6 brother, Joel Hall, and then Jon.

7 Q All right. And was there
8 anybody else in the family that would
9 have, to your knowledge, done this if
10 you hadn't gone down there and done it?
11 That is, get the statement from Jeff.

12 A Probably not. I can't say for
13 certain. I had the most contact with
14 Jeff, and he and I were very close
15 siblings, and because of his health, I
16 had taken on a very active role to just
17 support him through the dying process.
18 As a nurse, I have a lot of experience
19 in this unfortunately, and I thought I
20 could be of help, and I made two
21 different trips down to Texas, once with
22 my son and my husband, and another time
23 I flew down alone.

24 Q Do you know who Gloria Shettles

1 is?

2 A I believe she's a private
3 investigator.

4 Q And do you know what role she
5 served in this case?

6 A I believe she was supposed to
7 conduct a mitigation assessment. Is
8 that correct? To try and gather facts
9 into Jon's background and perhaps give
10 the Court more insight about the man he
11 was.

12 Q Now you did have occasion to
13 talk to her; did you not?

14 A By telephone.

15 Q All right. How many occasions
16 did you talk to her?

17 A Maybe one or two. I think there
18 was like phone tag. I think I called
19 her, she called back. Probably just one
20 time.

21 Q Okay. What kind of nurse are
22 you?

23 A I'm a registered nurse working
24 in intensive care. I have over 20 years

1 experience, about 22 or '3 now years
2 experience and most of it in intensive
3 care and five years experience where I
4 worked at Blue Cross & Blue Shield and
5 did medical authorizations for hospital
6 admissions, be they medical or
7 psychiatric. As a nurse, my direct care
8 of people who are suicidal led me to be
9 concerned about Jon's situation, and I
10 was recognizing problems that needed to
11 be addressed there that were going on.

12 Q Do you know what the DSM is?

13 A It is a classification of
14 diagnoses and definitions of medical
15 terms, I believe. It helps categorize
16 illnesses for insurance purposes and
17 other just general medical textbook
18 reference materials.

19 Q During the course of this
20 conversation you had with Gloria, did
21 you and her discuss the DSM?

22 A Yes, sir.

23 Q And what section of the DSM did
24 y'all discuss?

1 A Intermittent explosive disease.

2 Q All right. And were y'all both
3 fairly much on the same page that that
4 was something that needed to be looked
5 into with Jon?

6 A Absolutely.

7 Q And this was well before trial;
8 was it not?

9 A Yes, sir.

10 Q All right. Did you ever know of
11 any, any, psychiatrist that was ever
12 employed for Jon?

13 A No, sir.

14 Q Did you bring up this -- And I'm
15 going to call it IED instead of
16 intermittent explosive disorder so we
17 won't drag out too much here today. Who
18 brought up the idea of looking at the
19 IED in the DSM?

20 A Ms. Shettles did in a phone
21 conversation. She actually read it to
22 me out of the book.

23 Q And you and her went over that
24 together?

1 A Yes. I have notes detailing the
2 conversation.

3 Q Did you assume that she would be
4 relating that to the attorneys?

5 A Absolutely.

6 Q Did you have any reason to think
7 that she would hide anything from the
8 attorneys?

9 A I couldn't see why she would.

10 Q Did she identify herself as
11 working on behalf of Jon and his staff
12 counsel?

13 A Yes, sir.

14 Q Now, do you remember some of the
15 things that were in the DSM about IED?

16 A Basically that different people
17 are more predisposed to it based on --

18 MR. EARLS: Your Honor, I object
19 to her testimony about this. She's not
20 qualified on that.

21 MR. BUCHANAN: Judge, I'm not
22 asking her for an opinion. I'm asking
23 her if she remembers what it states, and
24 then I'm going to ask her if she's seen

1 any of these things in Jon.

2 MR. EARLS: We'd object to the
3 hearsay on it, Your Honor.

4 THE COURT: I'm going to sustain
5 the objection. There are other ways I
6 take it counsel can pursue this.

7 MR. BUCHANAN: Oh, yes.

8 THE COURT: But the State's
9 right in their objection at this point
10 in time, and I'm going to sustain the
11 objection.

12 Q Have you ever seen what you
13 thought was something like IED in Jon?

14 MR. EARLS: Same objection, Your
15 Honor. She's not qualified to diagnose
16 him as anything.

17 THE COURT: At this point in
18 time, I find that she has not been
19 established to be a witness that can
20 testify further regarding that
21 particular question. I'm going to
22 sustain the objection.

23 MR. BUCHANAN: All right. Can I
24 proffer it as just a proffer, Judge?

1 THE COURT: Do you want in your
2 proffer to qualify her to some extent,
3 or are you just going to ask that one
4 question and let her respond?

5 MR. BUCHANAN: Well, I --

6 THE COURT: I'll let you
7 proffer. Ask that one question if
8 that's what you want to do.

9 Q Let me try something else. Is
10 part of your nursing psychiatric
11 nursing?

12 A I did have to evaluate
13 psychiatric admissions to see if it was
14 an appropriate set of circumstances to
15 admit somebody to the hospital.

16 Q So you would do, as I understand
17 it, kind of a triage, so to speak?

18 A It was a medical review
19 technically, and, yes. I would get a
20 phone call from a hospital
21 representative who would tell me the
22 facts of the admission. For example,
23 somebody who was making threats to
24 commit suicide, particularly if weapons

1 became involved in this, what their
2 family circumstances were, triggering
3 events, stressors, and whether these
4 were such that it would lead to harm to
5 the patient or to those people around
6 them, and if it satisfied those
7 criteria, then the admission would be
8 authorized. And so I was taking the
9 data for the insurance company and
10 making approvals based on that kind of
11 data.

12 Q And you had to be a nurse to do
13 that.

14 A Yes.

15 Q So, if somebody exhibited the
16 symptoms of IED, for instance, you
17 wouldn't make a diagnosis, but you would
18 make an admittance and refer it to a
19 doctor saying, at least look at this,
20 and it might be this, could be that, et
21 cetera, things like that?

22 A I actually was authorized to
23 approve those admissions if it satisfied
24 the criteria without the doctor's

1 referral. If it was borderline, I would
2 refer it and the doctor would make a
3 judgment call, but if it clearly was
4 stating that the person was suicidal or
5 they went into McDonald's and pulled a
6 gun on the people at the restaurant, for
7 example, and there's weapons involved,
8 those sort of things happening in
9 conjunction with emotional distress,
10 crying jags and lability of emotions
11 being demonstrated over and over again
12 in different circumstances, those were
13 clear-cut cases that there was real
14 trouble brewing and that the best
15 situation for them would be to
16 hospitalize them and remove them from
17 those circumstances where they could
18 hurt themselves or hurt those around
19 them.

20 Q So, I'm not trying to be tacky
21 here, but I want to make certain, you
22 were making kind of like a pre-
23 diagnosis?

24 A Yes.

1 Q Before the doctor actually got
2 there?

3 A Uh-huh.

4 Q Okay. And I assume that your
5 notes would steer the doctor in whatever
6 directions that you felt were
7 appropriate.

8 A Right.

9 Q All right. So, were you
10 familiar with the criteria of what made
11 up someone with IED?

12 A It was right on line, too, but,
13 yes, I knew it very well.

14 Q Have you seen any of those
15 things that are consistent with what IED
16 is in Jon?

17 A Yes, sir.

18 Q All right. And what are those
19 things?

20 A A quick temper, depression,
21 emotional lability, crying, and not just
22 crying but like hours at a time and not
23 being able to stop crying, just loss of
24 control over your emotions. He had not

1 been able to hold a job because of that,
2 and it was affecting everything in his
3 life. He, as I understand it, had
4 weapons pulled on him, and the situation
5 was becoming more and more volatile. I
6 was afraid for his life and for the
7 situation that they were in, that it
8 could only have a bad outcome. We
9 wanted him to get out of the marriage
10 and leave that situation. I wanted to
11 hospitalize him.

12 Q Well as a psychiatric nurse,
13 once you were to move a case like that
14 on down the line and admit them into the
15 hospital, who best to actually make that
16 diagnosis, a psychologist or a
17 psychiatrist?

18 A A psychiatrist has more --

19 Q And why is that?

20 A Well, they're medical doctors,
21 and they can prescribe medications, and
22 they have more medical training than a
23 psychologist does. A psychologist is
24 more into counseling, whereas a

1 psychiatrist is an actual physician who
2 can prescribe and treat.

3 Q And again, do you know of any
4 psychiatrist that's ever been employed
5 on this case?

6 A No, sir.

7 Q At least before the trial.

8 A Correct.

9 Q Okay. Did you know that Jon had
10 a thing about telephone wires, telephone
11 lines?

12 A I knew that when he was at home,
13 that an argument with my mother resulted
14 in him going down to disconnect a
15 telephone so that she wouldn't call her
16 sister.

17 Q So he could have her attention.

18 A Right. She said to Jon, "I'm
19 upset. I'm done arguing with you. I'm
20 going to call Arlene, and I'm just going
21 to go over there until you cool off,"
22 and he disconnected the telephone line,
23 and she wasn't able to place the call.

24 Q And you knew about this prior to

1 February of 1997?

2 A Yes, I did.

3 Q If any attorney had asked you
4 about it, would you have been free to
5 talk to them about it?

6 A Sure.

7 Q Been willing to?

8 A Uh-huh.

9 Q And when you do know of Jon
10 having disconnected phone lines in the
11 past, has he ever done violence to
12 anybody?

13 A No.

14 Q Well why does he disconnect the
15 phone lines? Do you know?

16 A Because he wants to resolve the
17 conversation rather than have them leave
18 him hanging, and he wants to have the
19 attention and not be ignored or walked
20 away from.

21 Q But to your knowledge, he had
22 never hurt anybody when he had done this
23 in the past.

24 A No.

1 Q Did any attorney ever talk to
2 you about coming in telling the jury
3 about his proclivity to disconnect phone
4 lines just to get the attention of the
5 person he wanted to talk to?

6 A No, sir.

7 Q Did you know much about Billie
8 and his relationship as far as the
9 turbulence of it, the marital relations?
10 Did you know much about that?

11 A I did have occasion to stay
12 overnight on two different nights with
13 him and Billie at their home when I was
14 traveling to see my brother Jeff. I
15 stayed there as a halfway point on the
16 trip down and back, and I did see them
17 interact during that time.

18 Q Is that the only time you
19 actually laid eyes on them in the
20 marriage?

21 A No.

22 Q Okay. Were there other times?

23 A He came to my house with her.
24 Actually I think it was just him and his

1 children. She stayed behind, so I have
2 to recant that because I think that Jon
3 just brought the girls out to my mom's
4 and stayed at my house on that trip, you
5 know, as a halfway point there
6 traveling, and I'm thinking that Billie
7 didn't come along on that trip. So I
8 suppose I saw them in his home.

9 Q Did you see any of the
10 storminess in that relationship when you
11 saw them?

12 A Yes, I did.

13 Q How would Billie treat Jon?

14 A She berated him all the time.
15 She just constantly was saying negative
16 things about him, whether he was in the
17 room or whether he wasn't. She was
18 brow-beating him. She was saying things
19 like he wasn't able to provide for the
20 family and that he wasn't pulling his
21 weight and she had to do everything, but
22 what I observed was Jon doing the child
23 care and the cooking and the cleaning of
24 the house and all of those things. I

1 saw him doing it, but she was telling me
2 that he wasn't doing it.

3 Q Were you ever asked by any
4 attorney before trial, during trial,
5 about provocation in the way she treated
6 him and provoked him?

7 A No.

8 Q Were you ever asked by any
9 attorney to provide pictures?

10 A No, sir.

11 Q Would you have done so if you'd
12 been asked?

13 A Yes.

14 Q Do you know if any pictures were
15 even introduced in the sentencing phase
16 of this capital murder sentencing trial?

17 A There were no pictures.

18 Q Did any attorney ever tell you
19 any reason why they weren't going to put
20 pictures in?

21 A Well, there was almost no
22 interchange. No, no one explained
23 anything like that.

24 Q Had you seen Jon act as a father

1 in his inter-reaction with the children?

2 A Yes, I did witness that pretty
3 extensively.

4 Q Would you tell the Judge what
5 you observed as regards him being a
6 father?

7 A What I observed was not only at
8 Jon's house but on a visit to my
9 mother's home that he made with the two
10 younger children, his natural children,
11 and he was extremely attentive and
12 loving with them. He picked them up and
13 gave them physical care and attention a
14 lot. He prepared special foods for the
15 toddler and for the infant, you know,
16 that no one else could do, and he was
17 very well-versed in what their likes and
18 dislikes were and how to feed and cook
19 for them. He dressed them very -- He
20 always made sure that they looked their
21 best and would put dresses on the girls
22 and would work especially with Jessica.
23 I was always impressed with how he was
24 able to do therapy with the baby who had

1 a lot of medical needs because of her
2 cerebral palsy. He would do physical
3 therapy exercises with her, and I would
4 watch him actually counting out the reps
5 and going through an actual routine that
6 he had been trained to do by medical
7 staff, and speech therapy exercises that
8 he would do with her, and above all, he
9 made sure that nobody in the family
10 would exclude her from activities. He
11 wanted her to be present and be part of
12 everything, even if it was difficult for
13 him to include her in such things
14 because he wanted her not to feel
15 singled out or be kept apart from those
16 kinds of activities.

17 Q How severely handicapped is
18 Jessica?

19 A I haven't seen her since she was
20 three, I suppose, but at that time she
21 had a deformity of her arm, and she held
22 it out like this (indicating), and she
23 couldn't really move it much beyond
24 that. She couldn't grasp onto things,

1 and she didn't have normal range of
2 motion. It was almost frozen in this
3 position on her one arm. She had the
4 abnormal toe-walking gait that's common
5 with cerebral palsy, and she was late in
6 learning how to walk. I believe at the
7 time I saw her she was able to hold onto
8 what was equivalent to a walker or some
9 kind of a toy with wheels on it that she
10 would be able to maneuver, but she was
11 I'm sure well over two before she was
12 able to walk. She seemed of normal
13 intelligence, though. She did have
14 speech therapy, but she was actually a
15 very bright and loving little girl. He
16 gave her treatments for her breathing
17 problems. She was so premature she had
18 lung damage that resulted in stiffness
19 of her lungs. She was prone to
20 congestive heart failure and frequently
21 had to take steroids to get her over
22 illnesses, and she needed to have
23 breathing treatments as a maintenance
24 daily program to keep her lungs properly

1 humidified and aerated so she could
2 excrete the mucus that would collect in
3 there. If she didn't do that
4 aggressively, she would be prone worse
5 to develop pneumonia. So they had to do
6 a regimen with her on a daily basis,
7 about four times a day, to give her
8 nebulized breathing treatments with
9 saline to keep her able to mobilize her
10 secretions so she wouldn't get
11 infections. In spite of that, she did
12 get infections a lot of the times, and
13 then there were medications that would
14 have to be added to these treatments,
15 and Jon was very religious about making
16 sure that those treatments were done on
17 proper schedule. He would listen to her
18 breathing and assess if she needed
19 medical attention, if she might need to
20 be seen by a doctor or get on
21 antibiotics to get her over an illness.
22 He was very alert and attuned to doing
23 that. He was able to provide total care
24 for a complicated medical problem.

1 Q In the 18 lines of testimony
2 heard by you -- the jury -- And when I
3 say 18 lines, I mean what's in the
4 record as far as questions back and
5 forth. I know part of them are
6 questions from the attorneys, but it
7 takes up 18 lines. Were you ever asked
8 any question about him being a father
9 and him doing these sorts of things for
10 this poor child?

11 A No.

12 Q Were you ever -- Did the
13 attorneys ever say, "We don't want to go
14 into that? We've got a good reason for
15 it." Did they ever tell you that?

16 A No.

17 Q Would you have been willing had
18 you been asked to tell the jury about
19 this father side of him as opposed to
20 the monster side that's obviously in the
21 record by this time?

22 A I tried very hard to, yes.

23 Q How did you try?

24 A I tried calling his attorneys

1 and explaining these types of things to
2 them, and I really didn't feel that they
3 were interested in knowing anything
4 about Jon's background. They seemed to
5 not know much about him at all. When I
6 would talk to them, they were unaware of
7 a lot of things that I would think they
8 would certainly have known at that
9 point.

10 Q So you didn't testify about his
11 proclivity on disconnecting phone lines;
12 you didn't testify about IED; you didn't
13 testify about his care as a father.

14 A Correct.

15 Q You testified, what, that he
16 came from a house where there was a lot
17 of fights? Is that correct?

18 A That's -- Yes.

19 Q It in a nutshell. Okay. Did
20 you ever get an opportunity to talk to
21 the attorneys regarding bite marks that
22 you'd seen on Jon or that any of your
23 family had seen on Jon from Billie?

24 A I told attorneys on the phone,

1 and I'm not sure which ones. At this
2 point it's getting a little fuzzy, but I
3 told them that there had been
4 altercations where she had left marks on
5 him, but I don't think anything came of
6 it. They never asked me at trial.

7 Q Did you call -- I know Mr. Mayo
8 and Mr. Ford handled the trial in the
9 courtroom, but you -- you called -- and
10 you made phone calls to them over time;
11 did you not?

12 A I did.

13 Q Did you also make phone calls to
14 the attorneys appointed prior to them?

15 A I had a lot of phone contact
16 with Mr. Googe and Spracher, if I'm
17 saying his name right. I apologize if
18 I'm not.

19 Q All right.

20 A Yeah, extensively.

21 Q Were you available for any of
22 these attorneys at any time to call you
23 at your home and talk to you?

24 A Sure, yes.

1 Q In fact, you were asking for
2 that to happen; were you not?

3 A Over and over.

4 Q Had you been talking to Jeff
5 prior to his death on the telephone?

6 A Yeah, regularly. I kept real
7 close contact with him, probably from
8 about 1993 on.

9 Q Is that how you knew that he had
10 material things to tell the attorneys?

11 A Yes.

12 Q Your mother currently is in
13 Pennsylvania; is she not?

14 A Yes, she is.

15 Q Would you tell the Court what
16 her medical situation is, just for the
17 record?

18 A My mother is diagnosed with
19 emphysema and COPD, and she nearly died
20 two times since January. She had to be
21 taken to the hospital emergency room and
22 both times was being debated by her
23 physicians whether or not to intubate
24 and place her on life support because

1 her breathing was so dire that they
2 thought she would die without it. On
3 the first occasion, she was hospitalized
4 about a week and spent over two weeks
5 convalescing in a nursing home before
6 she was able to return home, and after
7 that admission, she was on oxygen
8 permanently, and currently she's not
9 able to go more than 15 minutes without
10 the oxygen, without struggling to
11 breathe and getting into dire problems.
12 On the second admission she had
13 pneumonia, she spent the night on a
14 machine called a BiPAP that they strap
15 onto your face and it forces air into
16 your lungs.

17 MR. EARLS: Your Honor, I assume
18 this is being offered to show why she
19 can't be here, but I don't know if we
20 need to go into her medical history.

21 THE COURT: Well we've gone
22 sufficiently into. I don't know --

23 MR. BUCHANAN: I'll sum it up
24 later on down the road.

1 Q But anyway, she can't medically
2 be here as of this date, can she?

3 A No. She can't be without oxygen
4 at all, so it's impossible for her to
5 travel.

6 Q And she's just recently taken
7 this turn for the worse. She had
8 planned to be here but could not.

9 A Yes, sir.

10 Q Just recently we found that out.

11 A Yes.

12 Q She did testify at the trial;
13 did -- at the punishment phase of the
14 trial, didn't she?

15 A Yes. Not during the first part.

16 Q Okay. Referring back to your
17 testimony about the terrible fights,
18 your father was also Jon's father.
19 Correct?

20 A Yes.

21 Q All right. Can you tell the
22 Judge a little bit about the father?
23 And especially his drinking and his
24 inter-reaction with your mother and

1 their conflict resolution..

2 A Dad drank every day. He would
3 stop at a bar on his way home from work
4 every day and typically spend about two
5 hours a day there before he would come
6 home for dinner. On a number of
7 occasions, I'll say maybe once a month
8 or -- I don't know. It's hard to
9 estimate times. But, he would stay out
10 even later and not come for dinner. On
11 those occasions we were not allowed to
12 sit down at the table and eat because if
13 we ate without him, we would -- we
14 thought that he was going to be angry
15 with us, so we had to wait for him to
16 come home. There was one time when he
17 didn't come home. It got to be after
18 eight at night, and no one had had
19 dinner, and it was a school night, and
20 we were loaded into the car to go
21 looking for him at a bar, and she found
22 him, and there was words exchanged
23 there, and he did come home after that.
24 He was driving crazy.

1 And one occasion there was a
2 terrible, terrible fight where he came
3 home late, and we knew there was just
4 going to be a fight. There was no words
5 exchanged. He came into the house, and
6 it was, like I said, in the evening
7 sometime, well after dinner. We had all
8 been waiting for him to come home so we
9 could eat. He walked in the house and
10 looked at her, and she looked at him,
11 and nobody said anything, and then he
12 walked over, and he took her glasses
13 from her face and threw them at the wall
14 and they shattered, and then he started
15 punching her in the face with his fists,
16 and this fight continued to where he had
17 her pinned on the floor, was pounding
18 her head on the floor. I saw him take a
19 handful of hair and rip it out, and it
20 left a bald spot there was so much hair.
21 I never saw anything so horrible in my
22 life. Bleeding from her nose. Her eyes
23 were blackened. I wouldn't be surprised
24 if ribs were broken during this fight.

1 She may have had -- well, I'm sure she
2 had a concussion. She couldn't hear for
3 several days afterwards from the blows
4 to her head. I climbed on his back and
5 tried to pull him off of her at one
6 point, and he just turned around and
7 slung his arm, and I was -- my weight
8 was on his back, and it took me through
9 the air and threw me into the wall, and
10 then I slid down the wall to the floor,
11 and it knocked the wind out of me and
12 scared me that he would hurt the kids,
13 hurt me as well. That one ended with
14 the police coming out, and I think he
15 might have known they were coming, and
16 he laid off before they arrived. But
17 there was blood everywhere. The phone
18 was torn out of the wall. Back then
19 there was not a jack but rather a hard-
20 wired phone cord, and he just tore that
21 and ripped it right out of the phone so
22 that they had to come out from the phone
23 company to rewire it.

24 MR. EARLS: Your Honor, I

1 understand the Court's previous ruling,
2 but we're getting into a narrative here.
3 If he could ask questions, we might get
4 this testimony over.

5 MR. BUCHANAN: That's fair.

6 THE COURT: I agree with the
7 State. Move along. So of this she has
8 testified to, there was fighting in the
9 relationship, even since this witness
10 has been on the stand, when she first
11 started.

12 MR. BUCHANAN: Yes, sir, I
13 understand.

14 THE COURT: How she wanted them
15 to be divorced, et cetera, et cetera.

16 MR. BUCHANAN: I wanted to refer
17 back to the fact that she --

18 Q This was summarized as the fight
19 with fistfuls of hair when you testified
20 here at the trial; was it not?

21 A Yes.

22 Q You didn't go into any of the
23 detail you just went into, did you, at
24 the trial?

1 A No.

2 Q Was Jon -- And I don't believe
3 this was asked at the trial. Was Jon
4 present when this terrible fight
5 happened?

6 A Yes, sir.

7 Q Was he in a position to see the
8 phone being ripped off the wall?

9 A Yes.

10 Q And all the blood and
11 everything?

12 A Yes.

13 Q How did your father treat Jon?

14 A He disowned him. He denied that
15 Jon was his son.

16 Q Would he do that to his face or
17 just behind his back?

18 A No, it was blatantly apparent to
19 everyone in the family and common
20 knowledge to everyone in our family,
21 that Dad didn't believe Jon was his son.
22 He treated him differently. He was cold
23 to him. He never gave him any attention
24 at all, and to drag home the point, he

1 would shower special affection on the
2 other child next older than Jon, onto
3 Joel, and treat Joel with special favors
4 and take him for ice cream or just to
5 play with him, and then if Jon was in
6 the room, he would make a big production
7 about removing himself and not giving
8 any attention to Jon, acting as though
9 he wasn't even in the room, in a very
10 hurtful way that Jon got the message
11 that, "Daddy doesn't love you."

12 Q Okay. When you had the
13 conversations that you had with Jeff,
14 Jon and the attempted conversations with
15 the lawyer and Sheryl and Gloria
16 Shettles, did you journalize those
17 conversations?

18 A Yes, I did.

19 Q Did you make contemporaneous
20 entries with what had happened in a
21 running journal?

22 A Yes, soon as I would hang up.

23 Q And were those entries made
24 about the time that you actually had the

1 conversation?

2 A Yes.

3 Q And did you have personal
4 knowledge of what you were putting down
5 in your journal?

6 A Yes.

7 Q And that journal is available
8 here today; is it not?

9 A Yes.

10 Q Do you have that journal with
11 you?

12 A I have a series of notebooks,
13 yes, the journal, my conversations --

14 Q Would you mind pulling them out?
15 And I'm specifically talking about those
16 things that we just questioned you
17 about, that being where you would make
18 entries contemporaneous with your
19 knowledge of what had happened with your
20 conversations on a running basis.

21 A This could take a while.

22 Q That's okay. Just get to those
23 portions if you don't mind, please.

24 MR. EARLS: Your Honor, the

1 State objects to any journal being
2 entered into evidence. She certainly
3 hasn't needed it to refresh her
4 recollection, and it's not a business
5 document.

6 THE COURT: That was my first
7 thought. Is she pursuing some notes now
8 to refresh her recollection, or is
9 counsel intending to attempt to
10 introduce this as an exhibit?

11 MR. BUCHANAN: Well, I was
12 thinking it qualified, Your Honor, as a
13 business record with the contemporaneous
14 entries. I was going to tender it that
15 way.

16 THE COURT: It's clearly not a
17 business record exception. Go ahead if
18 you have another thought on the matter.

19 Q Ms. Arbogast, do you refer and
20 have you referred to these to refresh
21 your memory to come here to testify
22 today?

23 A I'm sorry?

24 Q Have you referred to these

1 journals to --

2 A Yes.

3 Q -- refresh your memory to
4 testify here today?

5 A Yes, sir. I just located about
6 a six-page journal summarizing a
7 conversation with Mr. Googe here on
8 11/15/94.

9 MR. BUCHANAN: I'll tell you
10 what I'm going to do, Your Honor. I'm
11 going -- To save some time, I'm going to
12 wait 'til we have an evening recess, and
13 I'll Xerox what I think may be needed to
14 be as a court's exhibit, perhaps.

15 THE COURT: Under what basis
16 will you offer it as an exhibit?

17 MR. BUCHANAN: That it was used
18 to refresh her recollection.

19 THE COURT: You're saying that's
20 the basis to allow it in as an exhibit?

21 MR. BUCHANAN: Well, yes, sir.

22 I -- I --

23 THE COURT: Let me hear from the
24 State on that.

1 MR. EARLS: Your Honor, first of
2 all, she's testified here from the
3 stand. She hasn't referred to those
4 notes until he brought them up. Second
5 of all, that exception does not make the
6 document an exhibit.

7 THE COURT: It allows you the
8 opportunity to review what she might
9 have used to refresh her recollection.

10 MR. EARLS: That's correct.

11 THE COURT: But not coming in as
12 an exhibit. So that's not a theory
13 under which the Court would accept it as
14 an exhibit.

15 Go ahead if you have further
16 argument on it.

17 MR. BUCHANAN: Well, I guess
18 what I'm saying, I may have it -- I may
19 have it submitted as an exhibit just for
20 the record, and the reason I say that,
21 Your Honor, is that I know now that --
22 after the 1996 anti-terrorism and
23 effective death penalty act, this is the
24 last time you can get anything into the

1 record, essentially. I'm not saying you
2 can't but for most purposes. So, if
3 there is a reason, I'll probably try to
4 tender it later, but I'm --

5 THE COURT: If you do tender it,
6 then we'll talk about the State's
7 objection because they are objecting to
8 it, and so far you've not given me a
9 theory under which it can come in.

10 MR. BUCHANAN: Right, and I
11 don't want to take time to just sit here
12 and --

13 THE COURT: Go ahead and let's
14 finish with this witness.

15 Q Did you have an occasion to see
16 what you thought was some conduct
17 involving a juror during the course of
18 the trial?

19 A Yes, sir.

20 Q Would you tell the Court about
21 that?

22 MR. EARLS: Your Honor, the
23 State's objecting. I don't believe
24 there's anything in the petition about

1 any juror misconduct that they're trying
2 to get into, and I don't think that's
3 ever been raised.

4 THE COURT: I don't recall
5 reviewing any but go ahead and --

6 MR. BUCHANAN: It's not the jury
7 misconduct; it's the lawyers not
8 bringing it to the Court's attention.
9 I'm not offering to show that there's
10 jury misconduct. I'm offering it to
11 show that they have a continued pattern
12 of being told about things and then they
13 don't do anything about it. I mean,
14 there's no way I'm ever going to be able
15 to prove misconduct. I'm not saying
16 that. What I am saying is that at the
17 time they were told, just like with
18 Jeff, if they had of done something
19 about it, maybe we could have. And I
20 think that's the whole reason we're
21 here, is to show what the attorneys did
22 and what they did not do.

23 THE COURT: I'm going to sustain
24 the objection at this point in time from

1 this witness. The State didn't object
2 to what's already come in. I'm going to
3 sustain the objection. Move on.

4 Q All right. What exactly did
5 Jeff tell you about Jon that you thought
6 was important that the Court should know
7 and that his attorney should know?

8 A Specific details included that
9 she had pointed a gun in his face when
10 he came to the house to pick up some of
11 his things. Actually he wanted to get
12 the mail, and my mom had sent some money
13 to him, and he was planning to use that
14 money to travel to Texas. He was going
15 to move in with Jeff in Texas and try
16 and start over in another state and
17 separate from Billie, and Mom gave him
18 some startup money. I think it was an
19 amount of \$250 in the form of a check.

20 MR. EARLS: Your Honor, I just
21 want to emphasize for the record that
22 we've got an objection on hearsay, and I
23 haven't -- I understand the Court's
24 ruling, but still --

1 THE COURT: Well, now, you
2 haven't specifically objected to
3 hearsay. When we first started this,
4 you were objecting to some extent to
5 relevancy and how was it relevant, and I
6 made my ruling on that. Now you've not
7 objected to a lot of things that were
8 hearsay.

9 MR. EARLS: I understand. Well
10 at this point I'm objecting to anything
11 that's coming in that has anything to do
12 with conversations with third parties
13 that she was told about or anything of
14 that nature.

15 THE COURT: Well, make your
16 objection timely. Don't tell me now
17 you're making some blanket objection. I
18 understand you've objected from this
19 point to what she just testified to. Is
20 that correct?

21 MR. EARLS: Yes, sir.

22 THE COURT: Does counsel want to
23 respond?

24 MR. BUCHANAN: Yes, sir, I do.

1 I appreciate Mr. Earls letting her
2 testify to this point. I understand
3 exactly what he objected to. I can
4 understand that it would normally be
5 hearsay. I'm offering it only to show,
6 from here on in, what she's testifying
7 to from here forward, as to what the
8 attorneys might could have gotten had
9 they gotten on the ball and gotten this
10 testimony reduced down to some sort of
11 writing.

12 THE COURT: Well I've allowed
13 the affidavit to come in, I believe it's
14 marked Exhibit 5, and stand on my ruling
15 on that. But as far as any other
16 testimony at this point that she's
17 giving that someone else said at some
18 other point in time, I'm not allowing.
19 I'm going to sustain the objection.

20 MR. BUCHANAN: And I understand
21 it would be hearsay, Your Honor, and I
22 would tender it as a proffer so I can at
23 least argue it on appeal.

24 THE COURT: So you're beginning

1 your proffer now. Go ahead and ask the
2 question, and tell me when the proffer
3 is over with.

4 MR. BUCHANAN: I will, Your
5 Honor.

6 Q Would you please continue about
7 what Jeff -- the things that Jeff had
8 told you that gave you pause for concern
9 that you thought the attorneys should be
10 aware of and perhaps reduced to some
11 sort of admissible form of testimony?

12 A That Jon had not been able to
13 work because he was so distressed. He
14 was depressed and crying, and he
15 couldn't carry on a conversation without
16 breaking down, and he was very labile.
17 He would, in his conversations, say to
18 Jeff that he was so heartbroken that he
19 thought Billie didn't love him, that she
20 was involved with someone else. He was
21 afraid that she wanted to divorce him,
22 take his children from him, and he was
23 devastated because he loved his
24 children. He would then jump streams.

1 and be distraught about not being around
2 Mom because he missed her a lot, and
3 then he would cry because Jeff was dying
4 and he wished that he could take his
5 place. He felt like Jeff's death was
6 just too much stress, and all these
7 things simultaneously bearing down on
8 him were causing him to be acutely
9 depressed, to the point where he
10 couldn't hardly function or hold a job
11 or anything. That coupled with the fact
12 that Billie had somehow gotten this gun
13 and was pointing guns in his face and
14 trying to provoke him and --

15 Q I believe that was testified to
16 before the proffer, so -- unless that's
17 something new.

18 A Just that he was acutely
19 depressed and that this situation was
20 headed for a bad outcome.

21 Q Was there anything --

22 MR. BUCHANAN: And still again
23 on the proffer, this question on the
24 proffer.

1 Q Was there anything regarding his
2 observations of Jon there in Texas
3 specifically regarding the way the
4 police handled him and about his shoes?

5 A About his shoes?

6 Q Uh-huh.

7 A I know that Jeff phoned the
8 police to come and pick up Jon. We knew
9 that there was an APB out. We all had
10 spoken on the phone and knew that Jon
11 needed to be brought in. We were afraid
12 that he would be shot on sight, and we
13 wanted to get him in voluntarily so that
14 that wouldn't happen. If Jon -- I'm
15 trying to remember something about
16 shoes, that they might have come off
17 when he had the accident and didn't have
18 -- Shoes? I don't know what you're
19 asking.

20 Q If you don't remember, that's
21 fine, Sheryl. Okay.

22 MR. BUCHANAN: Just a moment,
23 Your Honor. One more thing on the
24 proffer.

1 Q What do you know that Jeff would
2 have testified to, or you think Jeff
3 would have testified to, as regards Jon
4 knowledge of whether or not Billie was
5 dead there in Texas, when he was there
6 in Texas?

7 A He didn't know she was dead,
8 that he clearly stated that Jon felt
9 like the police were telling him that
10 she was dead to get him to say something
11 about the fight or incriminating, but he
12 honestly didn't know she was dead. He
13 didn't know why Jeff called the police
14 on him. He was totally confused
15 whenever they showed up. He didn't
16 know.

17 Q But he didn't know that --
18 According to him, Jon didn't know she
19 was --

20 A As far as I'm aware, --

21 Q I'm sorry.

22 A -- Jon found out for certain
23 when he called home, which was about
24 five days later before he was allowed to

1 call and speak with my mother, and she
2 -- I guess he had tried to call, and we
3 were actually attending the funeral, and
4 when we got back from the funeral, he
5 did get a call through to Mom and found
6 out at that point after the funeral that
7 she was, in fact, dead, and he had a
8 terrible breakdown during the
9 conversation.

10 MR. BUCHANAN: End of proffer,
11 Your Honor, and I pass the witness.

12 THE COURT: Thank you.

13 CROSS-EXAMINATION

14 BY MR. EARLS:

15 Q Ms. Arbogast, everything that
16 you've testified to here this morning as
17 regard to Jon Hall's family situation
18 while he was growing up, you testified
19 to at trial; did you not?

20 MR. BUCHANAN: Your Honor, I
21 want to object. The record speaks for
22 itself. That's totally redundant. It's
23 18 lines. The Court can find out
24 everything she said in about a minute

1 and a half.

2 MR. EARLS: I think I can ask
3 her that. It's a yes or no question.

4 THE COURT: I'm going to let him
5 ask.

6 Go ahead.

7 Q This testimony was heard at
8 trial, wasn't it?

9 A I have to answer yes or no. No,
10 not what -- not in any detail.

11 Q Are you telling me that you
12 didn't testify about his family history
13 and his daddy beating his mother?

14 MR. BUCHANAN: Well, Your Honor,
15 then I'm going to object to the form of
16 the question because testifying --

17 THE COURT: Objection sustained.

18 MR. BUCHANAN: Thank you.

19 Q You were called by defense
20 counsel to testify, weren't you? You
21 were allowed to testify.

22 A Yes.

23 Q Now, from the time that you left
24 for college 'til the time that the

1 murder happened in '94, how many times
2 had you seen Jon Hall?

3 A At Christmas time and in '93 for
4 about a half of a week when we were all
5 home for a large family reunion, perhaps
6 some on weekends when I would come home
7 from college.

8 Q What period of time are we
9 talking about? When did you go to
10 college?

11 A 1977 through '79.

12 Q So, from 1977 'til the time of
13 the homicide in '94, you'd seen him,
14 what, three, four times?

15 A I had lived in West Virginia.
16 During that period of time, I probably
17 saw him on holidays when I would travel
18 home. I usually would go home about
19 twice a year and I would see him then.
20 I was living out of state.

21 Q You testified on Direct -- you
22 said you'd spent a night with him, and
23 then he came up to your mother's house
24 on one occasion.

1 A Yes.

2 Q And that was three occasions.

3 A Well, yeah, in addition to what
4 I'm telling you now. When he and Billie
5 were married, I believe it was '94 when
6 I went down to visit Jeff the first
7 time, I stayed at his home on the trip
8 down, and then a week later on the
9 return trip I spent one night at his
10 house, and at another time, Jon was
11 traveling to visit my mother, and he
12 stayed at my house with his two girls.

13 Q You also testified on Direct
14 that no other family member seemed as
15 interested in this case as you did.

16 A They're interested, but they are
17 somewhat intimidated by attorneys and
18 are not certain what to say on the
19 phone. They feel they're not being
20 listened to, and I've been a little bit
21 braver, and, therefore, I've been
22 somehow appointed in the family to be
23 the spokesperson on Jon's behalf, but I
24 have constant communication with my

1 siblings and with my mother in regard to
2 this and what's being done to try and
3 get his side of the story told.

4 Q So if I understand your answer,
5 several members of your family were in
6 contact with defense counsels then.

7 A No. I was the only person who
8 actually had telephone contact with
9 them. I didn't understand your
10 question. I apologize.

11 Q I thought you said they were
12 intimidated by the phone conversations.

13 A They never made any phone
14 conversations. They wouldn't even dial
15 the phone.

16 Q And you were contacted by the
17 investigator for the defense team,
18 weren't you?

19 A Yes, once by phone.

20 Q And you told her all this family
21 history and everything.

22 A Yes.

23 Q As a matter of fact, she's the
24 one that pointed out to you about the

1 DSM-IV and this intermittent explosive
2 disorder.

3 A Yes, sir.

4 Q Well, then prior to her pointing
5 it out, you really never even knew it
6 applied to Jon, did you?

7 A No, you're stating an opinion,
8 but I had full knowledge. I'm giving
9 her this information, and we were
10 discussing the fact that Jon definitely
11 has what I always referred to as
12 rage/control disorder or a problem with
13 controlling his behavior, getting angry
14 and having short temper, and she read
15 the DSM diagnosis, and I said, "That's
16 exactly what I'm talking about." It's
17 not as though it was the first time I
18 ever had that thought.

19 Q Now you said that to your
20 knowledge there had been no psychiatrist
21 hired for Jon. To your knowledge, he
22 was interviewed and evaluated by Western
23 Mental Health, wasn't he?

24 A He was in a facility.

1 Q He was interviewed, determined
2 to be competent to stand trial, wasn't
3 he?

4 A Yes.

5 Q The insanity defense didn't
6 apply to him, did it? That was the
7 evaluation.

8 A That was their determination.

9 Q Okay. He also had a
10 psychologist that was appointed by the
11 Court, didn't he?

12 A There was somebody who he talked
13 to. I can't remember the person's name.

14 Q Does the name Lynn Zagler mean
15 anything to you?

16 A Yes, I remember her.

17 Q That was the court-appointed
18 psychologist.

19 A Psychologist, yes, sir.

20 Q And she testified at trial,
21 didn't she?

22 A I wasn't allowed in. I --

23 Q Well the record will speak for
24 itself.

1 A Yes.

2 Q He was also evaluated in Middle
3 Tennessee, wasn't he, at the Western --
4 at Western -- excuse me -- Middle
5 Tennessee Health Institute.

6 A I -- I know that at one point he
7 was hospitalized for a couple of weeks.
8 That's all I'm recalling.

9 Q And did those people testify at
10 trial?

11 A I don't know.

12 Q Now, you said he had the
13 intermittent explosive disorder. So
14 that means he'd just kind of blow up,
15 have a -- what I call a temper fit or
16 just get angry all of a sudden?

17 A He would be provoked.

18 Q He'd have to be provoked?

19 A Yeah, 'cause normally Jon was a
20 very tender-hearted, easygoing guy.

21 Q Did you ever see him get angry
22 with his children?

23 A No, I did not.

24 Q Did you ever see him get angry

1 with anyone other than his wife?

2 A Sibling fights with Joel
3 perhaps, yeah. I didn't witness fights
4 with Jon and my mom. I know they had
5 arguments. I'd hear about them, but I
6 was not there.

7 Q You also testified that he had a
8 tendency to disconnect phones when he
9 wanted people to pay attention to him.

10 A Yes, sir.

11 Q And on the incident where he
12 disconnected your mother's phone, it was
13 because she was trying to call her
14 daughter?

15 A Her sister.

16 Q Her sister.

17 A Jon's aunt.

18 Q He didn't want her getting any
19 help?

20 A He didn't want her to leave. He
21 wanted to resolve what they were arguing
22 about.

23 Q So he was going to be in control
24 of that situation, wasn't he?

1 A I su- -- I don't know how to
2 answer. I believe he just wanted her to
3 stay and listen to him.

4 Q You said that you -- Did you
5 ever observe bite marks on Jon?

6 A Personally, no.

7 Q You never saw that.

8 A No. I spoke with my mom.

9 Q Did you know that Billie had an
10 order of protection against Jon Hall?

11 A Yes, I did.

12 Q And, you were not a witness to
13 anything that occurred on the night of
14 the homicide, were you?

15 A No. I was trying to reach him
16 by phone that night.

17 Q Okay. But you weren't present
18 when the homicide occurred.

19 A No.

20 Q You never saw Jon that night,
21 did you?

22 A I was out -- in a different
23 state.

24 Q Okay. Didn't talk to him that

1 night either, did you?

2 A I tried.

3 Q You absolutely know nothing
4 about what happened on the night of the
5 homicide, personally.

6 A How could I if I was out of
7 state?

8 THE COURT: Ma'am, you're not to
9 ask questions, you're to answer
10 questions.

11 Go ahead, General. Ask again.

12 THE WITNESS: Sorry.

13 Q You know absolutely nothing
14 about what happened on the night of the
15 homicide, do you?

16 A I know what I've been told.

17 Q But that's all you know.

18 A I wasn't there.

19 MR. EARLS: That's all I have.

20 THE COURT: Anything further of
21 this witness?

22 MR. BUCHANAN: Yes, sir. We're
23 not going to do this ever again
24 probably, but I would ask that Mr. Ellis

1 be allowed to ask her about four
2 questions for a foundation on 804, which
3 he did the research on. It'll be a lot
4 better to do it, if you don't mind. I'd
5 have to stumble through it.

6 THE COURT: Does the State
7 object?

8 MR. EARLS: Yes, sir.

9 THE COURT: It's not the normal
10 --

11 MR. ELLIS: I'll write it out,
12 Your Honor. That's fine. I'll write it
13 out.

14 THE COURT: It's not the normal
15 procedure, but I'm going to allow it to
16 save time, even over State's objection.

17 MR. BUCHANAN: That was my idea
18 to save a little time, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. ELLIS:

21 Q Your brother had AIDS? Or what
22 was his diagnosed condition?

23 A He had AIDS.

24 Q Okay. And as a registered

1 nurse, what's usually the prognosis of
2 that?

3 A It's a lot better now than it
4 was when he was diagnosed back in the
5 mid-eighties, but he survived nine
6 years. I knew once his T-cell count hit
7 50, he would get infection after
8 infection until he died.

9 Q So, did he --

10 THE COURT: Let me interrupt a
11 second. Is for purposes of the
12 affidavit that's been admitted as
13 Exhibit 5?

14 MR. ELLIS: No, Your Honor.
15 This is going to be for purposes of the
16 offer of proof. What I was going to do
17 to save time was when we break for
18 lunch, that we would take that back up
19 again and change that from an offer to
20 proof to actual admitted testimony.

21 THE COURT: Regarding her
22 conversations with --

23 MR. ELLIS: With Jeff.

24 THE COURT: -- the deceased

1 brother which has already been made.

2 MR. ELLIS: Right.

3 THE COURT: You're just trying
4 to lay the foundation to argue to the
5 Court it should be accepted.

6 MR. ELLIS: Exactly, Your Honor.

7 THE COURT: Okay, go ahead.

8 Q Did he know --

9 MR. EARLS: Just to preserve the
10 State's objection on it, first of all,
11 it's hearsay. It's also been ruled on
12 by the Court of Criminal Appeals. That
13 issue was raised when -- They offered
14 this proof at trial. Judge LaFon
15 refused to let it in. That issue was
16 raised at the Court of Criminal Appeals
17 and they rejected it. It's a previously
18 determined issue as to the admissibility
19 of her testimony about what Jeff would
20 have said.

21 MR. ELLIS: Not the affidavit,
22 Your Honor, but -- The affidavit was not
23 ruled on.

24 THE COURT: Well I've allowed

1 the affidavit in.

2 MR. ELLIS: Right. Your Honor,
3 I'm sorry. Let me check.

4 THE COURT: Does that conclude
5 this witness?

6 MR. ELLIS: Yes, Your Honor.

7 THE COURT: Anything further?
8 Is she free to go or stay in the
9 courtroom as she chooses?

10 MR. BUCHANAN: She's free to be
11 released, Your Honor.

12 (WITNESS EXCUSED.)

13 MR. ELLIS: Your Honor, we've
14 got two people I really need to get out
15 of here, actually three. This may push
16 us past 12:30.

17 THE COURT: That's fine. Just
18 call your next witness, and I appreciate
19 the update.

20 PAMELA FOREMAN was called and
21 being first duly sworn, was examined and
22 testified as follows:

23 MR. BUCHANAN: Your Honor, we're
24 going to ask Ms. Arbogast to get out and

1 check something at lunch, just to play
2 it safe.

3 THE COURT: Ms. Arbogast, you
4 are to remain outside and instructed and
5 reminded not to discuss your testimony
6 with anyone. The rule still applies to
7 you at this point in time. Counsel has
8 changed their mind. So just remember,
9 no discussion of your testimony and
10 remain outside. Thank you.

11 DIRECT EXAMINATION

12 BY MR. ELLIS:

13 Q For the record, please state
14 your name for the Court.

15 A Pamela Foreman.

16 Q Ms. Foreman, where do you live?

17 A I live at 389 North Main Street
18 in Lexington, Tennessee.

19 Q Ms. Foreman, on the night of all
20 these events, did you live at 480
21 Pleasant Hill Drive?

22 A Yeah.

23 Q And who lives there?

24 A At my house?

1 Q Yes, ma'am.

2 A It was me, my mother and my
3 grandfather.

4 Q Do you know Jon Hall?

5 A Yeah.

6 Q How do you know Jon?

7 A Well, he was my neighbor, and
8 also I used to baby-sit for them.

9 Q Did you have a chance to see --
10 Did you know who Billie Hall was?

11 A Yeah.

12 Q Okay. Did you have a chance to
13 see them interact with each other?

14 A Not with -- about like
15 arguments, that's about it, but not
16 really.

17 Q Okay. Did you ever have a
18 chance to just interact with Jon Hall?

19 A No.

20 Q You didn't talk to Jon or -- You
21 said you babysat his kids. Did he just
22 drop them off and leave or ...

23 A Well usually I went to the house
24 to baby-sit the kids.

1 Q And why would you be the one to
2 baby-sit the children?

3 A Well Billie asked me while they
4 was at work would I watch the kids like
5 when we get off -- you know, home from
6 school. So ...

7 Q Would you always watch the kids
8 or would somebody else watch the
9 children?

10 A Well, I was there most of the
11 time, you know.

12 Q Did Mr. Hall ever watch the
13 children?

14 A Yeah, he did.

15 Q Did you ever observe him with
16 the kids?

17 A I observe?

18 Q Did you ever watch him with his
19 children?

20 A Yeah, sometimes.

21 Q How did he treat his children?

22 A I'll say fairly.

23 Q Did he treat them fairly well?

24 A Yeah.

1 Q Would -- I think you stated one
2 reason was that you had babysat was they
3 worked.

4 A Yeah.

5 Q Would there be another reason
6 why Jon couldn't watch the kids and you
7 would have to baby-sit?

8 A No.

9 Q Do you know if Jon drank?

10 A Yeah.

11 Q Okay. When Jon babysat the
12 kids, did you watch him cook and clean
13 or do anything like that?

14 A Yeah, I was down there and he'd
15 been a cook.

16 Q How about, did you ever watch --
17 did you ever watch Jon fix anybody's
18 cars?

19 A Yeah.

20 Q Did he ever fix your car?

21 A No, I didn't have a car at the
22 time.

23 Q How about anybody in your
24 family's?

1 A Well, no. Mostly like neighbors
2 I've seen him fix on the cars.

3 Q And do you know if he took money
4 in exchange for that, or ...

5 A I don't know.

6 Q Did you talk to the D.A.'s
7 office about what happened that night?

8 A No.

9 Q Did you talk to any defense
10 counsel?

11 A No.

12 Q Did you talk to any private
13 investigators other than Ms. Higuera, I
14 believe this lady right here, about what
15 happened that night?

16 A No.

17 Q About Jon, about how they
18 interacted?

19 A Unh-unh.

20 Q Is that a -- She's got to write
21 this down, and I'm just asking you to
22 answer out loud so she can --

23 A Okay, no.

24 Q I'm sorry. So you didn't talk

1 to anybody about what you knew.

2 A No.

3 Q Did Mr. Hall ever work on your
4 grandfather's car?

5 A Not to my knowledge. I mean, I
6 don't remember.

7 MR. ELLIS: Your Honor, I pass
8 the witness.

9 THE COURT: Does the State have
10 any questions of this witness?

11 MR. EARLS: No questions.

12 (WITNESS EXCUSED.)

13 JACKIE BRITTAIN was called and
14 being first duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ELLIS:

18 Q For the record, sir, would you
19 please state your name?

20 A Jackie Brittain.

21 Q Can you spell your last name,
22 please? There's some confusion about
23 that.

24 A B-r-i-t-t-a-i-n.

1 Q Thank you, sir. Where do you
2 live, sir?

3 A 255 Ayers Street.

4 Q And that's in Lexington,
5 Tennessee?

6 A Yes, sir.

7 Q Did you live there on the night
8 that all this stuff took place?

9 A No, sir, I lived at Chumney's
10 Trailer Court at the time. It was on
11 Church Street.

12 Q Thank you, sir. Do you know Mr.
13 Jon Hall?

14 A Sure do.

15 Q How did you first meet Jon?

16 A He knew my wife. They run the
17 -- He done the mechanic work and my wife
18 and one of her ex-husband's had a
19 cleanup shop. They was in business
20 together, and I met Jon through her.

21 Q Were y'all friends?

22 A Yeah, me and Jon was.

23 Q Did you get to hang out with
24 them much?

1 A Yeah, we run around together.

2 Q Did you know his wife, Billie

3 Hall?

4 A Yeah.

5 Q Did you get to interact with

6 them?

7 A No, not with Billie, not a whole

8 lot because him and her had started

9 having problems, and he had came -- he

10 started staying with us because he

11 needed a place to stay.

12 Q 'Cause she asked him to leave?

13 A That's the way -- That was my

14 understanding, she had asked him to

15 leave, had a restraining order against

16 him or whatever.

17 Q So you -- But you had a chance

18 to hang around Jon a lot.

19 A Uh-huh.

20 Q So you got to see his moods and

21 how he acted?

22 A Also got to see restraining

23 order being broke by the deceased coming

24 by to try to talk to him.

1 MR. EARLS: Your Honor, that's
2 not responsive to any question.

3 THE COURT: Instruct the witness
4 to please respond to the question asked.
5 Thank you.

6 You may ask, Counsel. Ask the
7 question again if you wish.

8 Q Did you have a chance to watch
9 Jon's moods?

10 A Yes.

11 Q Now you were going into -- Were
12 you there present when the restraining
13 order was served?

14 A Well I wasn't there when the
15 restraining order was served on, no.

16 Q Were you there -- Did you watch
17 him while -- during the course of that
18 time?

19 A Yeah. He was -- He was -- He
20 was in and out there at our house.

21 Q Did Billie Hall ever come by
22 your house during the time of this
23 restraining order?

24 A That's -- Yes.

1 Q And what would she do?

2 A She had come by the house, asked
3 him to come and work on vehicles that
4 was there at the house and one thing and
5 another, you know, which, you know,
6 that's all I can -- I can say 'cause I
7 don't -- I don't know what y'all want to
8 hear.

9 Q We just want you to tell the
10 truth, Your Honor -- truth, Mr.
11 Brittain.

12 A Well, I mean, whenever I start
13 to say something I'm cut off, so ...

14 THE COURT: Instruct the witness
15 again just to simply answer the
16 question. The question will be asked
17 and you'll respond to the question.

18 Q Mr. Brittain, I apologize if I
19 cut you off. Is there something that I
20 cut you off on that you would like to --

21 A No. The only thing I couldn't
22 understand was how there could be a
23 restraining order against a man but then
24 the person --

1 THE COURT: Now the witness is
2 not to ask questions. I'm going to let
3 counsel now ask the next question. The
4 witness is not to ask questions; you're
5 to answer questions.

6 Go ahead, Mr. Ellis.

7 Q Whose assets -- Whose name were
8 all the assets that the Halls owned in?

9 A Supposably they was supposed to
10 been --

11 MR. EARLS: Now I object to any
12 supposedly.

13 THE COURT: Please instruct the
14 witness, you can testify of things of
15 your own personal knowledge, that you
16 know. So with that instruction, I'll
17 let counsel ask the question again.

18 A Well to my knowledge, what I had
19 been told --

20 MR. EARLS: Now, objection, Your
21 Honor.

22 THE COURT: The State's
23 objected. He said what he'd been told.
24 Unless you have comment, I'll sustain

1 the objection.

2 MR. ELLIS: Your Honor, actually
3 I'd ask for a little -- "Who told you?"
4 If he can correctly answer who told him
5 that, then it's going to come in maybe
6 under an exception.

7 Q Who told you that?

8 A Jon.

9 MR. EARLS: Same objection.

10 THE COURT: I'll sustain the
11 objection. That will be stricken. I
12 won't consider the response.

13 Q Were you supposed to testify at
14 trial?

15 A I was called and asked -- was
16 told to.

17 Q Who called you, sir?

18 A It was Jerry Woodall's office,
19 the District Attorney's office.

20 Q Did you testify?

21 A No.

22 Q Did you come to court?

23 A Yes.

24 Q Did you have to wait outside

1 like you did?

2 A Yes, but it was all different
3 then.

4 Q Did you -- Do you know who Jerry
5 Woodall is?

6 A I did at the time. Yes, I seen
7 him. I've seen him around.

8 Q Did you see him outside before
9 -- outside interacting with people?

10 A Yeah.

11 Q Who did he interact with that
12 you can remember?

13 MR. EARLS: Your Honor, object
14 to the relevancy.

15 MR. ELLIS: Again, Your Honor,
16 may I? Briefly, Your Honor, this is
17 something that defense counsel could
18 have inquired into if they had talked to
19 him. He's going to talk about
20 interaction with the children, giving
21 them candy, the fact that Mr. Dutton had
22 fast food, which is not something that
23 is jail-issue food, and they could have
24 explored that.

1 THE COURT: Who had fast food?

2 MR. ELLIS: Mr. Dutton.

3 MR. EARLS: I don't know what
4 that's got to do with anything, Your
5 Honor. Jerry Woodall's the District
6 Attorney. If he's not allowed to talk
7 to his witnesses, nobody is.

8 MR. ELLIS: Well, Your Honor, --

9 THE COURT: I'm going to sustain
10 the objection. Move along with this
11 witness as to anything relevant he might
12 have.

13 MR. ELLIS: Briefly for the
14 record, Your Honor, we would argue that,
15 giving Mr. Dutton food that's not
16 jailhouse-issue is more than just
17 talking with the witness, and also
18 giving candy to children is an improper
19 prompting of what to say and kind of a
20 reward, benefit reward.

21 THE COURT: You're just making
22 those comments and further argument to
23 your position?

24 MR. ELLIS: Yes, sir.

1 THE COURT: I stand on my
2 sustaining the objection. Move along.

3 Q Did you have a chance to talk to
4 defense counsel in this case?

5 A You talking about Jerry Woodall?

6 Q No, sir. Did you have a chance
7 to talk with Mr. Carthel Smith?

8 A No. Carthel Smith, I believe
9 they was dismissed before he ever really
10 got to talk to us about it.

11 Q Did you talk to any of Jon's
12 attorneys?

13 A The ones that represented him
14 here in Jackson. I don't remember who
15 they was.

16 Q Do you remember what you talked
17 about?

18 A They just asked about me and Jon
19 running around together.

20 Q When did they contact you?

21 A I don't really remember what the
22 dates was it's been so long now.

23 Q Did they talk to you before
24 trial?

1 A Yeah.

2 Q Did they talk to you -- Was the
3 first time they talked to you at the
4 courthouse?

5 A I believe so. It was like
6 whenever we walked in.

7 Q So that was the first time you
8 spoke with any attorney for Jon.

9 A Yeah. They walked up -- Best of
10 my knowledge, they walked up and
11 introduced theirselves then.

12 Q Does anything stick out in your
13 mind about them being upset -- Well,
14 strike that. Does anything stick out in
15 your mind about their demeanor towards
16 Jon?

17 A I don't -- I guess I would be
18 biased about it because I know Jon. I
19 just -- I just didn't think that it was
20 -- he was represented right. I don't
21 know. Just didn't seem right to me the
22 way it was done. I don't know.

23 MR. EARLS: Again, he's stating
24 his opinion and not responsive to the

1 question.

2 THE COURT: Objection sustained.

3 Q Did they specifically have issue
4 with Jon -- with any of Jon's issues
5 that you wanted raised? Let me strike
6 that. Did they ever talk about a flag,
7 something about a flag?

8 A Yeah. Yeah, that was brought
9 up, and the Judge -- I believe the Judge
10 -- best of my knowledge, the Judge told
11 him as long as he's sitting there -- it
12 was something to do with something --
13 the eagle or something that was on the
14 flag, and there was a big deal about
15 that, and I believe, if I'm not
16 mistaken, they told Jon that they could
17 remove him from the courtroom or
18 something but that was staying.

19 Q What did counsel have to say
20 about Jon's flag issue, if you remember?

21 A I don't really remember them --

22 MR. EARLS: Objection hearsay.

23 A -- saying a whole lot of
24 nothing.

1 THE COURT: Hold on just a
2 minute. He's objecting to hearsay.

3 MR. ELLIS: That's a party
4 opponent, Your Honor. We're attacking
5 the credibility or the effectiveness of
6 counsel. They would be on the opposite
7 side, so that comes in under 801(b)(2).

8 MR. EARLS: Your Honor, I don't
9 think --

10 THE COURT: Do you want to
11 respond further?

12 MR. EARLS: Well I don't think
13 he's a party opponent on that. But it's
14 hearsay. It's not relevant to anything
15 that --

16 THE COURT: What's the relevancy
17 in what problem they had or discussion
18 they had on the flag issue? Some judge
19 has already ruled on that prior to the
20 trial, I take it?

21 MR. ELLIS: Well, again, Your
22 Honor, it goes to they were upset with
23 Jon, that they weren't -- they didn't
24 have their whole heart into it. It goes

1 to the ineffective assistance of
2 counsel.

3 THE COURT: You're asking to
4 prove that through this witness.

5 MR. ELLIS: I asked him
6 specifically what was their demeanor
7 about that issue, about their attitudes
8 toward Jon.

9 THE COURT: Objection sustained.
10 Move along.

11 Q Do you know Jon to have a
12 temper?

13 A I have never -- Not up until
14 this time, this happened, because the
15 night in question when the law come to
16 my house looking for him, I thought that
17 they was looking for the wrong person.

18 MR. EARLS: Your Honor, he's not
19 responding to the question again.

20 THE COURT: Just respond to the
21 question asked. That will be stricken.
22 I won't consider it.

23 A No, I've never seen Jon lose his
24 temper.

1 THE COURT: Go ahead.

2 Q Did you ever see Jon interact
3 with his children?

4 A Yes, and I seen him inter-react
5 with my children, sit in the floor and
6 play with my children.

7 Q And how would he interact with
8 your children and his own children?

9 A Just like any other father would
10 with their kids, sit and play with them,
11 and, I mean, my son at the time, Jon sat
12 and was playing with cars with my son in
13 the floor just like I would.

14 Q Do you ever -- Do you know of
15 any instances where what I would term
16 Jon being a white knight, where he
17 helped somebody out or ...

18 A Two days before this incident
19 was supposedly have happened, one of our
20 neighbors and his wife was into it,
21 fussing and arguing, and the man was
22 standing over his wife fixing to hit
23 her, and Jon walked out and stopped it,
24 and the man told him, "I've got a

1 license for her. She's my wife." Jon
2 informed him then, "You may have a
3 license, but that don't give you the
4 reason to beat her."

5 Q Did you tell defense counsel
6 that story?

7 A Yes.

8 Q And to your knowledge, did they
9 ever use that? You weren't called to
10 testify at all.

11 A I wasn't called to testify.

12 Q So you never got to put into the
13 record what you saw.

14 A Unh-unh.

15 Q How about other incidences where
16 he helped people out with --

17 A Well me and my -- the woman I'm
18 with now, married to now, we were
19 stranded one time. It was like 1:30,
20 2:00 in the morning. She called Jon.
21 Jon come picked us up, carried us home,
22 went back the next day, got our car,
23 fixed it for us.

24 Q Did he charge you?

1 A Told us to pay him when we
2 could; if we couldn't, not to worry
3 about it.

4 Q Did you tell the defense counsel
5 that?

6 A Defense counsel didn't ask me a
7 whole lot of anything. Anything -- If
8 I'd go to answer them, they was -- just
9 cut me off.

10 Q Mr. Brittain, were you present
11 during the hearing for the protection
12 order?

13 A I was in General Sessions
14 whenever there was -- it was something
15 that was said about the protection that
16 was brought up because at the time,
17 there was a subject brought up about a
18 gun being pulled on him or something,
19 and there was a bunch of argument about
20 all that. That was in General Sessions
21 in Lexington.

22 Q Was Jon getting upset during
23 that hearing?

24 A Yeah, he did kindly get upset a

1 little bit because they wouldn't listen,
2 they wasn't listening to what he was
3 having to say. He was wanting to know
4 what the restraining order -- how did it
5 -- more or less how did it work, that it
6 was -- that the restraining order -- he
7 couldn't go to his house, but she could
8 come to where he was at. He was wanting
9 to know how it worked.

10 Q And I think you testified, but
11 just to make sure, did she come to his
12 -- over to your place?

13 A She come to the trailer where he
14 was staying at and asked him to come to
15 the trailer -- to their house to work on
16 the car.

17 Q While the order of protection
18 was in --

19 A While the order of protection
20 was supposed to be in for us.

21 Q Mr. Hall wants me to ask if Mrs.
22 Hall lied about the gun in order to get
23 the protection order.

24 MR. EARLS: Objection, Your

1 Honor. There's no basis of knowledge
2 laid first of all. I'd like to hear the
3 basis.

4 Q Do you know if Mrs. Hall had a
5 gun?

6 A Yes, I do.

7 Q Do you know if she carried that
8 gun?

9 A Yes, I do.

10 Q Do you know, was she asked
11 during the order of protection if she
12 had a gun?

13 A Yes.

14 MR. EARLS: Object to hearsay,
15 Your Honor.

16 MR. ELLIS: Declarant's
17 unavailable. It's also Mrs. Hall.

18 THE DEFENDANT: Court of record.

19 MR. EARLS: Well then produce
20 the record.

21 THE COURT: I was fixing to say.
22 I don't have the record. I think that's
23 the way it would come in, if at all.

24 THE DEFENDANT: That's

1 ineffective counsel.

2 MR. ELLIS: Then, Your Honor, we
3 would ask time to grab this record, to
4 put it in, and that we preserve the
5 record today so that we --

6 THE COURT: You wouldn't need
7 this record, you agree, to put in that
8 record.

9 MR. ELLIS: Excuse me, Your
10 Honor?

11 THE COURT: You're not saying
12 you need this witness to put in that
13 record.

14 MR. ELLIS: No, Your Honor.

15 THE COURT: So why are you
16 asking the right to reserve it if you
17 can get it? You don't need this witness
18 who's on the witness stand.

19 MR. ELLIS: But, Your Honor, I
20 do want to ask this witness questions
21 based on that hearing that could have
22 been used at trial to discredit Mrs.
23 Hall or been used potentially to --

24 MR. EARLS: Your Honor, you

1 can't impeach someone who's dead and
2 never testified, Your Honor. I don't
3 see the relevancy of that or how it
4 would even been admissible to impeach
5 her.

6 THE COURT: You're talking about
7 impeaching her when she was -- for
8 testimony she made when she was alive at
9 a hearing, and whether or not she was
10 truthful at that hearing. Of course,
11 she didn't later testify. Obviously she
12 was deceased for the purposes of this
13 trial for which Mr. Hall is
14 incarcerated.

15 MR. ELLIS: But, Your Honor, it
16 would also go to the fact that -- again,
17 it goes back to the theory that counsel
18 was -- what we appear to believe was
19 arguing voluntary manslaughter. This
20 would have gone to the heart of
21 provocation, that there was a history of
22 this stuff going on, that at the time
23 that she testified, there's independent
24 recollection that she was lying under

1 oath, you know. I think it goes -- it's
2 very germane to the issue.

3 THE COURT: If I recall what
4 questions you've asked this witness, I
5 don't know -- there's proof in the
6 record at this point that this witness,
7 this particular witness, was there at
8 the time the alleged pulling of the gun
9 occurred. So assume you bring the
10 transcript in and she says she didn't
11 have a gun. I don't know that this
12 witness was there to say she had a gun.
13 I don't -- He's testified she owned one.
14 But we're talking about a specific time
15 in the past where this gentleman, Mr.
16 Hall, was accused of an incident
17 involving a gun with his wife.

18 Q Did you see Mrs. Hall pull a
19 gun?

20 A I did not see her pull the gun.

21 Q During the course of the
22 hearing, was she asked specifically
23 whether she pulled the gun or did she
24 own the gun?

1 MR. EARLS: Your Honor, again,
2 object to hearsay.

3 THE COURT: I sustain the
4 objection.

5 Pass the witness?

6 MR. ELLIS: Just a second, Your
7 Honor.

8 We pass the witness, Your Honor.

9 THE COURT: Questions, General?

10 CROSS-EXAMINATION

11 BY MR. EARLS:

12 Q Mr. Brittain, you gave a
13 statement to law enforcement right after
14 this homicide, didn't you?

15 A Yes, sir.

16 Q And you talked to the TBI,
17 didn't you?

18 A Yes.

19 Q Did you ever tell TBI that Mr.
20 Hall had threatened to kill his wife?

21 MR. BUCHANAN: Your Honor, I
22 want to object. That's outside the
23 scope of Direct.

24 MR. EARLS: I don't think it is,

1 Your Honor. They called him to see what
2 he --

3 A Well I was --

4 THE COURT: Hold on --

5 A I was threatened --

6 THE COURT: -- a minute 'til I
7 tell you you can respond, sir. Do you
8 understand? Do you understand?

9 THE WITNESS: This is not --
10 Yes, sir.

11 THE COURT: General, go ahead.

12 MR. BUCHANAN: Is that overruled
13 or --

14 THE COURT: I want to -- We're
15 making argument right now. When I said,
16 "Go ahead," he interrupted me by
17 responding.

18 Go ahead.

19 MR. EARLS: Your Honor, I was
20 offering it to show that if he was
21 called to testify, one reason why
22 defense counsel wouldn't call him, and
23 after I establish this foundation, I'm
24 going to show why the State didn't call

1 him.

2 MR. BUCHANAN: Well, Your Honor,
3 the main reason we tendered him up is to
4 show that he had relevant testimony as
5 to Jon being a white knight and would
6 come to the aid of other people and how
7 much he was interviewed by defense
8 counsel prior to. I don't see how that
9 opens the door to what all has Jon ever
10 said to the TBI.

11 MR. EARLS: Well, if he's a
12 white knight, Your Honor, and he's
13 threatening to harm his wife, it's --

14 THE COURT: Overrule the
15 objection. You may ask. Go ahead.

16 Q Did you make a statement to TBI
17 that Jon threatened to hurt his wife?

18 A Yeah.

19 THE COURT: I'm sorry, I didn't
20 hear.

21 A Yes, sir.

22 Q Now, subsequent to that
23 statement, do you recall -- Do you know
24 Jack Wilson, investigator for the

1 District Attorney's office?

2 A Not by name.

3 Q Do you remember me?

4 A I've seen you around.

5 Q Do you remember myself and Jack

6 Wilson coming to your trailer in

7 Lexington, Tennessee and trying to serve

8 a subpoena on you?

9 A No, I don't.

10 Q Do you recall telling people

11 from the District Attorney's office that

12 you were not going to testify for the

13 State, that you were going to testify

14 for Jon?

15 A No.

16 Q Never made that statement?

17 A No.

18 MR. EARLS: That's all I have,

19 Your Honor.

20 THE COURT: Anything further of

21 this witness?

22 REDIRECT EXAMINATION

23 BY MR. ELLIS:

24 Q Actually, I believe you were

1 just asked whether you were -- both
2 threatened your wives?

3 A Well I -- like -- what I started
4 to say, I've been mad and I've
5 threatened mine. I've had three. I've
6 got two different -- had two different
7 wives, and in a fit of anger, just about
8 any man in this room, if they'd tell the
9 truth, they'd probably made the same
10 remark, that they would hurt their wife
11 or kill their wife.

12 Q Well, specifically when you and
13 Mr. Hall were talking about it, what was
14 the manner of the conversation?

15 A Cutting up and going on.

16 Q You were joking around?

17 A Joking around. There wasn't no
18 like -- like, I'm going to take a
19 machete or something and go do it, you
20 know.

21 MR. ELLIS: Nothing further,
22 Your Honor.

23 THE COURT: Questions, General?

24 MR. EARLS: No, sir.

1 THE COURT: Is this witness free
2 to leave?

3 MR. ELLIS: Yes, Your Honor.

4 THE COURT: You're free to go.

5 MR. EARLS: I wish to recall
6 him, Your Honor. I did not anticipate
7 him -- I've got his statement, and I may
8 want to recall him.

9 THE COURT: You're to remain
10 outside. You're not to discuss your
11 testimony with anyone, and we'll let you
12 know if you're released later, but
13 remain outside and do not discuss your
14 testimony. Thank you.

15 PAMELA BRITTAIN was called and
16 being first duly sworn, was examined and
17 testified as follows:

18 MR. ELLIS: Your Honor, before
19 we begin, I would ask that under the
20 rules of evidence, that Mrs. Brittain be
21 -- that I be allowed to cross-examine
22 her under 611 as a hostile and adverse
23 witness. I know that I am the one that
24 subpoenaed her. However, before we

1 spoke, she conveyed some opinions to me
2 that would have me believe that she may
3 not be cooperative with me.

4 MR. EARLS: I'd ask that he
5 establish that first.

6 THE COURT: I agree with the
7 State.

8 DIRECT EXAMINATION

9 BY MR. ELLIS:

10 Q Mrs. Brittain, did you talk with
11 me outside in the hall?

12 A Yes, I did.

13 Q And you told me that I better
14 not call you, didn't you?

15 A No, I didn't say that exactly.

16 Q What did you exactly say?

17 A I said I don't think I would be
18 the best witness for you at this time.

19 Q And you expressed to me your
20 opinion about Mr. Hall.

21 A Yes, I did.

22 Q And that was, what I would deem,
23 a negative opinion?

24 A Yes, I would suggest that.

1 Q And that you're pretty upset you
2 had to be here?

3 A I was not upset that I had to be
4 here. I was upset that y'all didn't
5 give us enough time to -- You subpoenaed
6 us yesterday afternoon.

7 Q Right.

8 A That's what I was upset about.

9 Q But you are upset that you're
10 here right now.

11 A No.

12 Q Okay. Well for the record,
13 what's your name?

14 A Darlene Brittain.

15 Q And where do you live?

16 A 255 Ayers, Lexington, Tennessee.

17 Q And, where did you live on the
18 night in question when all this took
19 place?

20 A 500 West Church Street,
21 Lexington, Tennessee.

22 Q Do you know Jon Hall?

23 A Yes, very well.

24 Q And how did you first meet Jon?

1 A I met Jon back in 1990. His
2 wife was coming -- was looking for him
3 for a job, and I had an automo-detail
4 clean up shop in Huntingdon, and I
5 leased him the bay next to me for him to
6 be a mechanic, and that's how I got to
7 know Jon.

8 Q Did you watch him interact with
9 -- Well, did you guys talk a lot?

10 A Oh, yes.

11 Q Did you watch him interact with
12 customers?

13 A Yes.

14 Q Did you ever have occasion to
15 watch him, what I call, cut people a
16 break?

17 A Oh, very much. I never saw Jon
18 ever been angry with anybody ever.

19 Q What about, would there be times
20 when individuals would come in and
21 couldn't pay right away?

22 A Sure.

23 Q And how would Jon handle that?

24 A "Well, just do what you can."

1 Q And he was pretty lenient with
2 them?
3 A Oh, absolutely.
4 Q So he would basically cut them a
5 break.
6 A Oh, sure.
7 Q Did Jon drink?
8 A No, not on a regular basis. I
9 wouldn't call Jon -- Did he ever take a
10 drink? Sure.
11 Q Did you ever watch him get
12 drunk?
13 A No.
14 Q Did you ever watch him do pot?
15 A No.
16 Q Have you ever seen Jon drink
17 whiskey?
18 A No.
19 Q Hard liquor? Do you remember
20 speaking with my investigator, April
21 Higuera, this lady right here?
22 A Uh-huh.
23 Q And when you talked to her, you
24 told her the truth, didn't you?

1 A Yeah. I think I did, yeah.

2 Q So if Ms. Higuera in her notes
3 stated that you'd seen Jon drink alcohol
4 and hard liquor, that'd be incorrect?
5 Would she be making it up?

6 A No, she wouldn't be making it
7 up. She caught me at a very bad time.
8 I had been asleep, and I wasn't really
9 coherent at that time.

10 Q Had you ever seen Jon drink
11 beer?

12 A Yes.

13 Q And what did beer do to Jon?

14 A Made him giddy.

15 Q In fact, made him drunk?

16 A Yeah, but I never saw him
17 violent ever.

18 MR. ELLIS: Again, Your Honor,
19 instruct the witness to answer the
20 questions asked, please.

21 THE COURT: Instruct the witness
22 to answer the questions.

23 Q Did you watch Jon and Billie
24 interact?

1 A Did I do what?

2 Q Did you ever watch Jon and

3 Billie talk to each other?

4 A Oh, yes.

5 Q How would Billie treat Jon?

6 A Like shit. Excuse my language.

7 Q What are some of the things that
8 she would do?

9 A She was extremely commanding and
10 demanding and abusive to him.

11 Q Did you ever see any physical
12 abuse? Did she hit him?

13 A Yeah.

14 Q Did she kick him?

15 A Yeah.

16 Q Scratch, bite?

17 A I never saw her scratch or bite.

18 Q But she would hit him or kick
19 him?

20 A Yes.

21 Q How about, what would she say to
22 him?

23 A She was constantly bitching at
24 him, you know. She would downgrade him,

1 like he wasn't worth anything, that he
2 couldn't do anything right.

3 Q So basically she ran him down in
4 front of you.

5 A Oh, yeah, absolutely.

6 Q How would Jon react to all this?

7 A Basically he would take it and
8 take it and take it for a long time, and
9 sometimes he'd get mad. Sometimes he'd
10 just ignore it. It would depend on the
11 situation.

12 Q Did you ever tell any of the
13 defense counsel this? Any of Jon's
14 attorneys?

15 A No, it was never asked of me.

16 Q They never asked you about this
17 kind of thing.

18 A No, never, never.

19 Q I think you said something about
20 Jon's temper. How would you
21 characterize his temper?

22 A In my personal experience with
23 him, I never saw him have a temper ever.

24 Q Right.

1 A He was the sweetest guy in the
2 whole world.

3 Q Did you ever talk to TBI Agent
4 Brian Byrd?

5 A Yes.

6 Q Okay. Did you ever tell Brian
7 Byrd that Jon was like a volcano about
8 to explode?

9 A I don't remember saying that. I
10 may have, but I don't remember it.

11 Q Okay. Do you ever remember
12 telling TBI Agent Brian Byrd that Jon
13 wanted to grind Billie up into hamburger
14 meat?

15 A No, I do not.

16 Q Did you tell defense counsel
17 that?

18 A No, I did not.

19 Q Did they ask you?

20 A No, they did not.

21 Q Did an investigator ask you from
22 the defense team?

23 A This whole thing about the
24 ground hamburger meat thing, I've no

1 memory of that at all in any way, shape
2 or form.

3 Q I believe your husband testified
4 that Jon lived with y'all for a little
5 bit.

6 A Yes.

7 Q During the time that Jon lived
8 with you, do you know if there was a
9 restraining order in place against Jon?

10 A There was an order of
11 protection.

12 Q Order of protection, excuse me.

13 A Yes.

14 Q And, did Mrs. Hall come over?

15 A She broke it, yes.

16 Q And when she'd come over, would
17 she do some of the things that you
18 talked about earlier?

19 A Be more specific.

20 Q Well, did you see her, for lack
21 of a better term, push his buttons?

22 A Yes.

23 Q Run him down?

24 A Yes.

1 Q Try to provoke him?

2 A Yes.

3 Q Did the defense counsel ever
4 talk to you about that?

5 A No.

6 Q Did anybody ask you that from
7 the defense team?

8 A No, they didn't use me.

9 Q Okay. Did you ever see Jon
10 interact with his kids?

11 A Oh, yeah.

12 Q How would you characterize Jon
13 as a father?

14 A Great.

15 Q What would he do with those
16 kids?

17 A As a matter of fact, Jon was
18 really basically the caregiver. He'd be
19 -- He'd come to the house a lot of times
20 and he'd have the baby, or he'd have one
21 of the little kids; not Billie. Seemed
22 like he had more interaction with the
23 children than she did.

24 Q Were there any examples of -- I

1 mean, you talked about -- testified
2 earlier about Jon cut people a break
3 with the mechanic. Was there any other
4 time, you know, he would stand up for
5 anybody or take up somebody's cause?

6 A Oh, yes, very much so.

7 Q Can you explain one instance?

8 A Yes. Two nights or three nights
9 before this actual thing happened with
10 Billie, there was a couple next door to
11 us that the boy was beating up on his --
12 there was a violent altercation between
13 a man and a woman, man and wife, and the
14 guy was -- had her down on the ground
15 and was beating her up, and Jon broke up
16 the fight and told the man, said, "You
17 don't have a right to do that to her.
18 That's your wife," and Jon literally
19 stopped the fight.

20 Q Again, did anybody from the --
21 did you ever tell anybody from the
22 defense team this? Did you ever tell
23 any of Jon's --

24 A The defense team did not talk to

1 me.

2 Q Thank you, ma'am. That's
3 exactly what --

4 A Period.

5 MR. ELLIS: Pass the witness.

6 THE COURT: Questions?

7 CROSS-EXAMINATION

8 BY MR. EARLS:

9 Q In your statement to TBI agents,
10 you were allowed to sign the statement,
11 weren't you?

12 A I don't remember doing that.
13 The only statement I remember signing
14 was a search warrant statement.

15 Q But you do not deny that in the
16 statement from Brian Byrd that you are
17 alleged to have said that Jon was going
18 to grind his wife up into hamburger
19 meat.

20 A I don't remember anything about
21 hamburger meat.

22 Q But that is part of your
23 statement.

24 A Are you asking me did I say

1 that?

2 Q Yes.

3 A I'm telling you I don't remember
4 saying that.

5 Q Okay. Do you recall speaking
6 with an investigator with the District
7 Attorney's office, Jack Wilson?

8 A Unh-unh.

9 Q Well, do you remember myself
10 trying to serve a subpoena on you?

11 A No.

12 Q Do you recall making a statement
13 to me and Jack Wilson that you were not
14 going to testify for the State, that you
15 were going to testify for Jon Hall?

16 A I don't even remember you.

17 Q Do you remember talking to
18 anybody from the D.A.'s office?

19 A The only people I remember
20 talking to is when I came to the trial,
21 the original trial, and them telling me,
22 "We don't want to use you because of the
23 ground hamburger meat deal," and that's
24 all I remember. This has been so long

1 ago I can't remember peoples' faces and
2 places that far back.

3 Q Who told you that?

4 A Who told me what?

5 Q That they didn't want to use you
6 because of the ground hamburger meat
7 deal?

8 A Jon's attorneys.

9 MR. EARLS: Thank you.

10 THE COURT: Anything further of
11 this witness?

12 MR. ELLIS: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. ELLIS:

15 Q At the time that Jon's attorneys
16 said they didn't want to use you because
17 of the hamburger meat, did you tell
18 them, that, "Hey, I didn't say that,"
19 or, "I don't remember --"

20 A I told them that I didn't --
21 They didn't even give me a chance to say
22 anything about that.

23 MR. ELLIS: Nothing further,
24 Your Honor.

1 (WITNESS EXCUSED.)

2 (There was a recess for
3 lunch from 12:35 to 1:35
4 p.m., and the following
5 proceedings were had:)

6 THE COURT: We'll take the next
7 witness.

8 MR. ELLIS: May it please the
9 Court, Your Honor, before we begin, I
10 believe we left off with Ms. Arbogast
11 about this issue of issue preclusion
12 about her testimony.

13 Looking at the opinion, State v.
14 Jon Hall, 8 S.W.3d, 593, there are two
15 paragraphs in particular that address
16 the testimony in question regarding Jeff
17 and what Jeff said to her, and the issue
18 specifically speaks to Mr. Hall's state
19 of mind. It also addresses -- The
20 opinion does state that it excludes the
21 testimony under 804(a)(4) and also under
22 804(b)(2). However, if you go back to
23 the trial transcript, Your Honor, that
24 would be Volume III, Pages 313 through

1 327, and again, Your Honor, I just
2 perused this before eating my hamburger
3 and right now, I do not see where
4 counsel laid the proper foundation to
5 have it admitted under either 804(a)(4)
6 or 804(b)(2). Also, Your Honor, I don't
7 think it would be precluded, issue
8 precluded, as to facts that he observed
9 that he told Ms. Arbogast. It would
10 only go as to state of mind, and,
11 therefore, Your Honor, we would ask for
12 the record that we be allowed to call
13 Ms. Arbogast to ask the qualifying
14 questions in regards to the question,
15 was he dying, did he know he was dying,
16 to get then in under 804(b)(2) and --

17 THE COURT: Comments, General?
18 I'm looking at those sections, the rules
19 of evidence. Go ahead.

20 MR. EARLS: Your Honor, the law
21 is well settled on this issue. Mr. Mayo
22 expressly tried to get this in. He made
23 a proffer of proof before Judge LaFon,
24 and Judge LaFon excluded it, the same

1 testimony the Court heard. It was
2 raised on appeal. The Court of Criminal
3 Appeals considered the admissibility of
4 the testimony through Ms. Arbogast, and
5 they ruled it was not admissible. Now
6 you can't just come back here and say,
7 "Well we want another shot at it under a
8 different rule." The issue's been
9 raised, it's been considered, and it's a
10 barred issue.

11 THE COURT: Go ahead.

12 MR. ELLIS: Actually, Your
13 Honor, I believe if they had done it
14 correctly or presented it correctly to
15 the Court of Criminal Appeals, it would
16 be a different issue, if they had done
17 it correctly during the trial procedure,
18 i.e., "Your Honor, we're going to make
19 an offer of proof. We're going to ask
20 the foundation questions or the founding
21 questions." If they would have argued
22 specifically to Judge LaFon, "Your
23 Honor, we're going to try to get this in
24 under 804(a)(4) or 804(b)(2), this is

1 the proper foundation," then I think we
2 would be with Mr. Earls. If anything,
3 it just goes to their ineffectiveness at
4 the time of trial.

5 THE COURT: You're wanting to
6 put her back on.

7 MR. ELLIS: Well, Your Honor,
8 just so we -- the last thing I want to
9 do, Your Honor, is get in front of Judge
10 Hays, Judge Glenn and Judge Smith and
11 have him look at me and say, "Mr. Ellis,
12 why didn't you do this at the hearing
13 stage when you knew it was an issue,"
14 which if you call them, that's what they
15 said to me the last time I was there.

16 THE COURT: Of course, I'm not
17 going to prevent you from making some
18 offer, just to the proof of the matter,
19 but I find that the issue has been
20 previously raised and addressed,
21 precluded for that reason, and also, I
22 don't see how it could come in as far --
23 as far as any self-serving statements
24 that he made to this now deceased

1 brother, would have come in anyway. I
2 don't see it happening then, and that's
3 another basis I'm not going to consider
4 at this time.

5 So I have two different reasons
6 which I'll stand on. Now if you need to
7 make some offer of proof, again, we're
8 going to proceed on with the offer of
9 proof within the argument at this point.

10 MR. ELLIS: Well, Your Honor,
11 we've already made the offer of proof as
12 to what -- and memorialized what Mr. --
13 Jeff would have testified to.

14 THE COURT: That's what I was
15 thinking you had done, and that's why I
16 asked were you wanting to put her back
17 on for some reason.

18 MR. ELLIS: Well the only thing
19 I want to put her back, though, is to
20 lay the foundation that he did tell her
21 this and --

22 THE COURT: Just to lay the
23 foundation you think you need under
24 those two sections of 804.

1 MR. ELLIS: Exactly.

2 THE COURT: Does the State
3 object to that for any reason?

4 MR. EARLS: No, sir.

5 THE COURT: Okay, put her back
6 on.

7 MR. EARLS: Well, yes, sir, I
8 do. I'm not waiving the issue
9 preclusion, but I understand the Court's
10 ruling.

11 THE COURT: Okay. Because I've
12 kept it out. This is strictly for an
13 offer of proof.

14 Do you want to call her back
15 around?

16 MR. ELLIS: Yes, Your Honor.
17 We'd like to call Sheryl Arbogast very
18 quickly.

19 THE COURT: You can just state
20 your offer of proof if you wish to do it
21 that way.

22 MR. ELLIS: Okay, Your Honor.
23 We will just say that she would have --
24 under oath, she would have testified

1 that on -- well that she called -- that
2 she called Mr. -- that she called Jeff
3 -- Your Honor, counsel informs me that
4 the safe play is to put her on.

5 THE COURT: Call her back in.

6 MR. ELLIS: Let's call her back
7 in, Your Honor.

8 SHERYL ARBOGAST was recalled and
9 being duly reminded of her oath,
10 testified further as follows:

11 THE COURT: Go ahead with your
12 offer of proof.

13 MR. ELLIS: Thank you, Your
14 Honor.

15 DIRECT EXAMINATION

16 BY MR. ELLIS:

17 Q Ms. Arbogast, I think before we
18 concluded your testimony you stated that
19 you had said that if the T-cell count
20 gets below 50 that death was preeminent
21 or was to follow shortly thereafter for
22 your brother Jeff.

23 A It would be generally about two
24 years' prognosis at that point.

1 Q Did Jeff know that?

2 A Yes.

3 Q And at the time, was it pretty
4 much considered if you had AIDS, you had
5 a death sentence?

6 A Yes.

7 Q And when you talked to your
8 brother, did he convey that idea to you?

9 A Uh-huh.

10 Q She needs to take down yes and
11 no. I'm sorry.

12 A Yes, sir.

13 Q And, when he called you and you
14 spoke about all these different issues,
15 was that -- what was the reason he
16 called you?

17 A I called him to check on his
18 health, but he spent the entire
19 conversation telling me how worried he
20 was about Jon. He was supposed to have
21 picked him up and -- on, I think, the
22 preceding Thursday. Jon was supposed to
23 have called him and told him where to
24 meet him since he was under a

1 restraining order, wasn't living at his
2 home. So he didn't know where to go and
3 get him.

4 Q Let me do it this way. You
5 spoke with Jeff after Jon was arrested.

6 A I spoke with Jeff on the night
7 that Billie died.

8 Q Right. Did you speak with him
9 afterwards?

10 A Yeah.

11 Q And he told you about things
12 that he recollected when Jon came down
13 to Texas.

14 A Yes.

15 Q And the reason -- was the reason
16 that he told you -- Well what was the
17 reason he felt like he needed to tell
18 you these things?

19 A Because I was insistent that Jon
20 was about to have a psychotic breakdown;
21 he needed to be hospitalized, and I was
22 begging him to help me bring that about,
23 knowing that Jon had intended to move in
24 with Jeff. So we needed to coordinate

1 where we could take him, what facilities
2 were available to hospitalize him.

3 Q I understand. And this all
4 happened before the night in question.
5 Right? I'm talking about your
6 conversations with Jeff afterwards about
7 when Jeff called the police, or --

8 A He --

9 Q Why did he tell you about those
10 things? Is what I'm asking about. Not
11 about what happened before but what
12 happened afterwards.

13 A Well, because, clearly, Jon had
14 no idea why the cops were called or what
15 had transpired. He didn't have any
16 recollection, and he was confused.

17 Q Did Jeff know that he was dying
18 at that time?

19 MR. EARLS: Object to leading.

20 MR. ELLIS: That's not leading.
21 That's an open end question. I'm not
22 suggesting the answer at all, Your
23 Honor.

24 THE COURT: You're objecting

1 just to the fact that it's leading?

2 MR. EARLS: Yes, sir.

3 THE COURT: Overruled. Go
4 ahead.

5 Q Let me ask you this. Did you
6 ever talk with Jeff about his condition?

7 A Yes.

8 Q Did he ever express to you his
9 opinion about what was going to happen
10 to him? To Jeff.

11 A Yes.

12 Q What did he say?

13 A He knew he was dying.

14 Q Okay. Now, did anybody ever
15 talk to him from the defense team? I
16 think you ...

17 A No.

18 Q Now, the reason that -- was the
19 -- what was the reason that he told you
20 all this thing about Jon, about what
21 happened when Jon came down to Texas?
22 Not before but afterwards. Why did Jeff
23 tell you?

24 A So that somebody would know what

1 had happened and -- from his
2 perspective, because he had had a lot of
3 contact with Jon prior to this event.

4 THE COURT: These are the things
5 -- I'm going to interrupt because these
6 are things we've been over. It's
7 cumulative. It's already in the record.

8 MR. ELLIS: That's what I was
9 just making sure of, Your Honor. That's
10 all I have.

11 THE COURT: Questions from the
12 State?

13 MR. EARLS: No, Your Honor.

14 THE COURT: Does this witness
15 need to remain outside?

16 MR. ELLIS: No, Your Honor.

17 THE COURT: The State have any
18 problem with her staying here or leaving
19 as she pleases?

20 MR. EARLS: I'd ask she stay
21 out.

22 THE COURT: Stay outside and be
23 reminded not to discuss the testimony.
24 You'll be called back as you're needed.

1 Thank you.

2 Next witness.

3 KATHY HUGO was called and being
4 first duly sworn, was examined and
5 testified as follows:

6 MR. BUCHANAN: Your Honor, for
7 purposes of the record, Ms. Hugo
8 testified in the punishment phase of the
9 previous trial in Volume IV at Page 427
10 to 430, for a reference point.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MR. BUCHANAN:

14 Q Would you please state your name
15 for the record, please, ma'am?

16 A Kathy Hugo.

17 Q And, Ms. Hugo, where do you
18 live?

19 A Ligonier, Pennsylvania.

20 Q And where did you live at the
21 time of this trial which was back in
22 1997?

23 A Ligonier, Pennsylvania.

24 Q Were you present here at the

1 trial when it was held here before?

2 A Yes.

3 Q And are you the same Kathy Hugo
4 that testified on -- at Volume IV -- in
5 Volume IV, Pages 427, 430 in the record?

6 A Yes.

7 Q And that consisted of about
8 three and a half pages of testimony?

9 A Okay, yes.

10 Q Did you have an opportunity to
11 look over it last night?

12 A Yes.

13 Q Okay. You primarily testified
14 that there were some beatings going on
15 in the house when Jon was growing up.

16 A Yes.

17 Q Is that it in a nutshell, fair
18 to say what you testified to? Okay.
19 Did any attorney ever get a hold of you?
20 You are Jon's sister; are you not?

21 A Yes.

22 Q Did any attorney for the defense
23 ever get a hold of you prior to that
24 trial?

1 A No.

2 Q When is the first contact you
3 had with any attorney for Jon?

4 A The night before we went to
5 court on the telephone.

6 Q And where were you contacted?

7 A In my hotel room.

8 Q About what time of night?

9 A Around 11:00.

10 Q All right. What were you told
11 by the attorney at that time?

12 A That we weren't supposed to say
13 anything bad about Billie. We were just
14 supposed to talk about what it was like
15 growing up in our home. Basically that
16 was it.

17 Q Okay. Did you have knowledge
18 about your father actually engaging in
19 these fights that you alluded to in your
20 testimony?

21 A Did I have knowledge of them?

22 Q Uh-huh.

23 A Yes.

24 Q Did Jon watch those?

1 A I know one in particular that he
2 did.

3 Q Okay. And he was subjected to
4 that household most of his life growing
5 up?

6 A Yes.

7 Q Okay. Did they ever tell you
8 any reason why they'd say, "We don't
9 want to talk about Jon even being in the
10 house"? Did they ever tell you anything
11 like that?

12 A Could you repeat the question?

13 Q Did the attorneys -- the
14 attorneys already said they told you
15 some things -- you said the attorneys
16 told you some things like don't say
17 anything bad about Billie.

18 A Yes.

19 Q Did they ever say, "We don't
20 even want to talk about Jon being in the
21 house, we just want to talk about the
22 house"? In other words, did they ever
23 give you a reason why they wouldn't talk
24 about Jon actually being subjected to

1 this fighting?

2 A I still don't think I understand
3 the question. Say it one more time.

4 Q No, I'm going to pass it on.
5 Did they talk to you anything about what
6 a good guy Jon was?

7 A I believe they asked if I
8 thought he was a good father.

9 Q Okay. I don't notice that's in
10 your testimony. Did they tell you any
11 reason why they weren't going to ask you
12 that on the stand?

13 A No.

14 Q So you're telling this Court
15 that you told them that Jon was a good
16 father prior to taking the stand, and
17 they should know that.

18 A I think they asked me that in
19 the testimony.

20 Q Okay. Don't think they did, but
21 we'll let the record stand on its own,
22 okay?

23 A Okay.

24 Q Did you -- Were you ever -- Did

1 you ever tell them that -- Did you know
2 Billie had children prior to marrying
3 Jon?

4 A Yes.

5 Q All right. And what was Jon's
6 relationship with those children?

7 A It was good.

8 Q And was that based on
9 observations you made?

10 A I was at his wedding reception,
11 and they were there.

12 Q Did those kids have a term of
13 affection for Jon?

14 A Daddy Jon. I think I heard them
15 call him Daddy Jon.

16 Q Okay. Do you know any reason
17 why you weren't asked that in the trial
18 testimony?

19 A No.

20 Q Okay. You haven't been in here,
21 but you saw some pictures that had been
22 put together that we looked at last
23 night; did you not?

24 A Yes.

1 Q If you had been asked, could you
2 have presented and got together some
3 pictures for the attorneys?

4 A Of Jon and Billie?

5 Q Yes.

6 A Uh-huh.

7 Q Okay. And of Jon when he was
8 younger?

9 A Yes.

10 Q Okay. Would you have been
11 willing to do that if you'd been asked?

12 A Yes.

13 Q Were you ever asked?

14 A No.

15 Q Did you ever call -- In the
16 three and a half years that this case
17 pended, did you ever call any of Jon's
18 attorneys yourself?

19 A No.

20 Q Were you -- Did you -- Who did
21 you leave the calling of the attorneys
22 to?

23 A Well my sister Sheryl was mostly
24 the one that talked to the attorneys.

1 Q Okay. And I just want to get it
2 in my mind. Sheryl was kind of the go-
3 between to the lawyers, and you and your
4 other sister Debbie would -- she would
5 turn around and talk to y'all about what
6 was going on. Is that --

7 A Yes.

8 Q Okay. And, at all -- was there
9 at any time during those three and a
10 half years that you ever made it known
11 that you were not willing to cooperate
12 or not willing to help?

13 A No, I was never asked.

14 Q Okay. During that three and a
15 half years, were at all times you
16 willing to help if the attorneys had
17 called?

18 A I would have done whatever I
19 could do.

20 Q Okay. Did an investigator for
21 the attorneys ever call you or talk to
22 you?

23 A No.

24 Q Okay. Did you have knowledge of

1 the running joke in the family about Jon
2 and his penchant for ripping telephone
3 -- disconnecting telephone wires?

4 A Yes.

5 Q Okay. That was a fairly common
6 knowledge thing, was it not, that Jon
7 liked to take telephone wires off of
8 blocks to get peoples' attention?

9 A Yeah.

10 Q If the attorneys had inquired of
11 you and asked you and said, "Is Jon --
12 Is that something Jon does all the time,
13 or is that something sinister he did
14 this one time," what could you have told
15 them?

16 A He disconnected my mother's
17 telephone wires.

18 Q And why does he do that?

19 A I don't know.

20 Q Okay. But, heretofore, he had
21 done it and had anybody ever been hurt?

22 A No.

23 Q Had -- To your knowledge, had
24 anybody ever had it done to them with an

1 eye towards hurting them?

2 A Unh-unh, no.

3 Q Okay. And if you had been
4 asked, would you have been willing to
5 testify to that at the trial?

6 A Yes.

7 Q Okay. Did you ever talk to the
8 attorneys about any conduct you saw with
9 the jurors and one of Billie's family
10 members?

11 A Yes.

12 Q And who did you tell that to?

13 A The attorneys at the -- Mr. Mayo
14 and Mr. Ford.

15 Q Okay. And what did you tell
16 them?

17 A That when we were waiting in the
18 hall, that we saw one of the jurors go
19 over to the family and hug them.

20 Q Okay. And, did -- were you in
21 the courtroom to see if they ever did
22 anything about that?

23 A I only came in the courtroom for
24 the very end.

1 Q For your testimony?

2 A Yes.

3 Q Did Mr. Mayo or Mr. Ford tell
4 you they were going to do anything with
5 that information you gave them?

6 A Not that I recall, no.

7 MR. EARLS: Your Honor, just for
8 the record, that's not part of the
9 petition. It's never been raised in the
10 petition, so I'm not going to waive that
11 issue as far as them failing to raise
12 it. Now, if they're offering it for
13 some reason ...

14 MR. BUCHANAN: Your Honor, and I
15 agree with Mr. Earls in this sense, that
16 I'm not taking that as a separate issue
17 of jury misconduct. Don't ever expect
18 to prove it. I do want to pile on on
19 showing a course and pattern of being
20 given information that they ignored and
21 didn't do anything with.

22 THE COURT: I understand that
23 from being your previous argument, and I
24 still sustain the objection of the

1 State. It came in once a few witnesses
2 back and there was no objection. The
3 State's objecting again, and I think
4 it's a proper objection and sustain it.

5 Q Did you know a lot about your
6 mother and Jon's father growing up? Did
7 you stay in the house the whole time
8 that you were growing up?

9 A 'Til I got married, and I moved
10 next door.

11 Q And, you did testify that there
12 were some fights that went on. Did you
13 ever -- Did you -- Was Jon there when
14 these terrible fights were going on?

15 A Probably for most of them.

16 Q How would Jon react to it?

17 A The one I remember in
18 particular, my dad had my mom down on
19 the floor, and I think all of us were
20 trying to get my dad off my mom. Jon
21 was very small, and he had a fly swatter
22 and was hitting my dad and telling him
23 to get off my mother.

24 Q What kind of boy was Jon when he

1 was younger?

2 A A sweet little boy.

3 Q Was he a trouble at school? Was
4 he getting in trouble in any way, shape
5 or form, or was he nice -- nice young --
6 mannered young man?

7 A I think he got in trouble in his
8 teenage years like pulling fire alarms
9 and things like that.

10 Q But did he treat people with
11 respect in general?

12 A Yes.

13 Q And would you have been willing
14 to testify to that if you had been
15 asked?

16 A Uh-huh, yes.

17 Q Now you moved out when you were
18 19. Is that right?

19 A Yes.

20 Q You are of the -- between you
21 and Debbie and Sheryl, you know the
22 least about what went on in the Jon
23 Hall/Billie Hall household. Is that
24 fair to say?

1 A I was never at their house.

2 Q Okay. Most of what you came in
3 to know as to what their relationship
4 was between them comes as a result of
5 what you've been -- something you've
6 been told. Is that correct?

7 A Mostly by my mother or Sheryl.
8 Well, Debbie, too.

9 Q Okay. Did -- Have you ever
10 known Jon to be the kind of person, by
11 anything that you've observed, that
12 would stand up for the small person or
13 the little guy or the underdog?

14 A Jon is that type of person, yes.

15 Q And would you have so testified
16 had you been asked back in 1997?

17 A Yes.

18 Q Okay. This -- Had you ever seen
19 on your part this explosive or rage-type
20 behavior on Jon's part?

21 A Yes.

22 Q And when would that be that
23 you'd see stuff like that? What would
24 trigger it?

1 A Well, there was one time I think
2 one of his girlfriends took speakers
3 that belonged to him when he wasn't
4 there, and he was very angry about that.
5 I think he punched a hole in the wall.

6 Q Didn't punch her, punched a hole
7 in the wall.

8 A Punched a hole in the wall. I
9 never saw him hit anybody, just things.

10 Q Did Jon have plenty of this rage
11 to look at as he was growing up in terms
12 of the way to resolve problems and
13 conflict?

14 A Yes.

15 Q And that came from his dad?

16 A And his grandfather.

17 Q I was going to ask you that
18 next. Was Granddad any different than
19 Dad as far -- And when I say Granddad, I
20 mean paternal grandfather. Was he any
21 different than Jon as far -- not Jon but
22 was he any different than his son as far
23 as resolving conflict with rage?

24 A My grandfather?

1 Q Uh-huh.

2 A He was worse.

3 Q Worse even than your father.

4 A I saw him do a lot of things,
5 yes.

6 Q Did Jon ever, to your knowledge,
7 have a role model, a male role model, in
8 his life that calmly tried to resolve
9 conflict like you would think civilized
10 people would do?

11 A No.

12 MR. BUCHANAN: Just one moment,
13 Your Honor.

14 Q And one last question. I can't
15 believe I forgot this one. If you had
16 been asked in 1994, '95, '96 and '97
17 that had you ever seen him exhibit any
18 conduct that would lead you to believe
19 that he would premeditatedly murder
20 Billie, what would have been your
21 answer?

22 A No, I would never say that.

23 Q And would you have so testified
24 to if asked?

1 A Yes.

2 MR. BUCHANAN: No further
3 questions, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. EARLS:

6 Q You don't know anything about
7 the facts of the murder, do you?

8 A I know what my mother told me.

9 Q Of your own personal knowledge.
10 You weren't there and you don't know
11 anything. Is that right?

12 A Just what I was told.

13 Q Well, the only thing you know is
14 what somebody told you.

15 A Uh-huh.

16 Q Okay. And you were given an
17 opportunity to testify at trial, weren't
18 you? At the sentencing.

19 A I was asked a few questions.

20 Q But you basically -- you got to
21 testify about all this family history,
22 didn't you?

23 A I wasn't asked very many
24 questions.

1 MR. EARLS: That's all.

2 THE COURT: May this -- Go
3 ahead.

4 MR. BUCHANAN: Without
5 belaboring the point, Your Honor, I
6 would just -- or even object, and I'd
7 just like to say, let the record speak
8 for itself on what was asked and what
9 wasn't, without going -- I don't want to
10 take her and go over everything again.

11 THE COURT: I understand.
12 You're referring to Exhibit 1 which is
13 the transcript of that proceeding.

14 MR. BUCHANAN: Yes, sir. And
15 then those specific parts that I
16 enumerated before she took the stand.

17 THE COURT: I understand. Page
18 427 through 430.

19 Anything further of this
20 witness?

21 MR. BUCHANAN: No, sir.

22 (WITNESS EXCUSED.)

23 END OF VOLUME II.

24